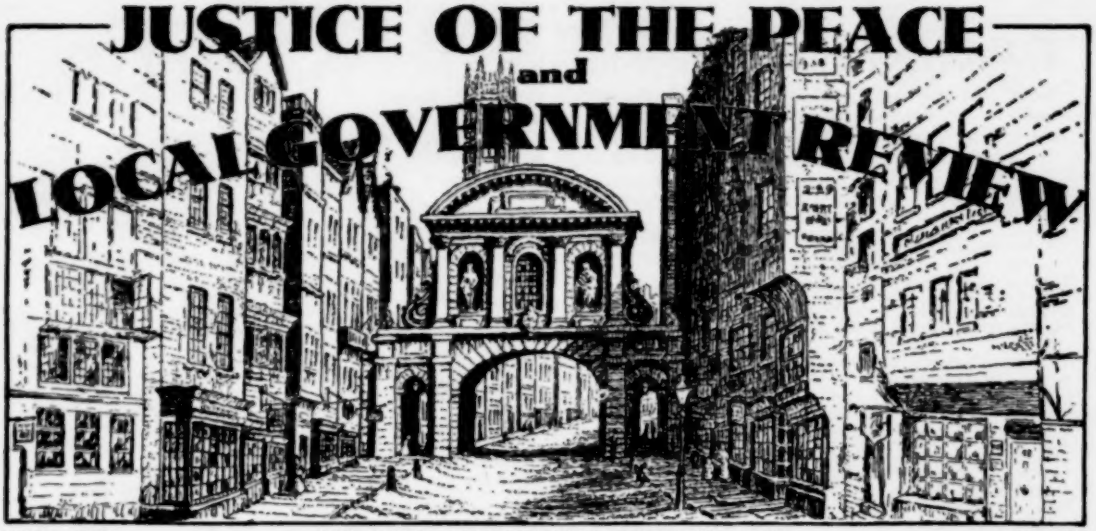

VOL. CXV. LONDON: SATURDAY, JUNE 23, 1951. No. 25

CONTENTS

REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra *Latest time for receipt* 10 *a.m. Thursday.*

JUSTICE OF THE PEACE AND LOCAL GOVERNMENT REVIEW.

Published by: JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex.

Telephone: CHICHESTER 3637 (Private Branch Exchange).

Telegraphic Address: JUSLOCGOV, CHICHESTER.

SITUATIONS VACANT

CLERK, with knowledge of magisterial practice, wanted for Justices' Clerk's Office in North Cheshire. Good prospects. Reply stating age, exp. and salary required to Box No. B.38.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (Hoylands), **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. DIVORCE—CONFIDENTIAL ENQUIRIES, ETC., anywhere. Over 400 agents in all parts of the U.K. and abroad. 1, Mayo Road, Bradford. Tel. 26823, day or night.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel.: Boldon 7301. Available day and night.

BOROUGH OF WEMBLEY

Assistant Solicitor A.P.T. VII—£685 × £25—£760 p.a. Plus London Weighting Allowance

APPLICATIONS endorsed Assistant Solicitor must be received by the Town Clerk, Town Hall, Wembley, by July 7, 1951. Names and addresses of three referees should be given and any relationship to a member or senior officer of the council must be disclosed. Canvassing disqualifies.

The Council will be unable to provide the successful applicant with housing accommodation.

WORCESTERSHIRE

Appointment of Whole-time Female Probation Officer

The Combined Probation Areas Committee invite applications from serving officers, and persons who have taken the Home Office Training Course, for the appointment of whole-time female probation officer. The appointment and salary will be in accordance with the Probation Rules for the time being in force and the successful applicant will be required to pass a medical examination. Age limits 23 to 40 years, except in the case of serving officers.

It will be an advantage if the successful applicant can provide a motor-car, for which an allowance will be paid in accordance with the County Council Scale.

Applications, stating age, qualifications and experience, with the names and addresses of three referees who can speak as to the applicant's experience, etc., to be received by the undersigned not later than June 30, 1951.

W. R. SCURFIELD,
Clerk of the Peace.

Shirehall,
Worcester. (R.143).

URBAN DISTRICT COUNCIL OF FARNBOROUGH

Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor, at a salary within Grades V (a), VI or VII of the A.P.T. Division of the National Scales (£600–£760 per annum), according to the degree of experience of the successful candidate.

Applicants should have good conveyancing experience. Local Government experience is not essential but preference will be given to candidates having such experience.

The appointment will be subject to the provisions of the National Scheme of Conditions of Service and the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, endorsed "Assistant Solicitor," giving details of age, date of admission, particulars of experience, qualifications and the present position held, together with the names of three referees, should be forwarded to the undersigned not later than Wednesday, July 11, 1951.

D. STUART JONES,
Clerk of the Council.

Town Hall,
Farnborough,
Hants.
June 15, 1951.

BOROUGH OF WESTON-SUPER-MARE

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment on the permanent establishment of the Council at a salary in accordance with the A.P.T. Division, Grade VII of the National Scales, commencing at £685 per annum.

The appointment will be subject to the National Scheme of Conditions of Service and the Local Government Superannuation Act, 1937.

Applicants must have experience in conveyancing and advocacy, and will be required to assist in the general work of the Town Clerk's Department. Previous local government experience will be an advantage but is not essential.

Applications, stating age, qualifications, experience, and details of present and past appointments, and also the names and addresses of three referees, must reach the undersigned not later than Friday, June 29, 1951.

Candidates must, when making their applications, disclose in writing whether to their knowledge they are related to any member or senior officer of the Council.

R. G. LICKFOLD,
Town Clerk.

Town Hall,
Weston-super-Mare.
June 12 1951.

CWMBRAN DEVELOPMENT CORPORATION (MONMOUTHSHIRE)

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above post at a salary of £800 × £50—£1,000 per annum. The post is superannuable and is subject to passing a medical examination. The person appointed will be the principal legal assistant to the Chief Legal and Administrative Officer.

Applicants should have sound experience in conveyancing. Public Authority and Advocacy experience is desirable but not essential.

Applications, giving particulars of age, education, qualifications and experience, together with the names and addresses of two referees, should reach the undersigned by July 2, 1951.

T. W. REES,
General Manager.

Town Hall, Newport, Mon.

HERTFORDSHIRE COMBINED PROBATION AREA

Appointment of Full-Time Female Probation Officer

APPLICATIONS are invited for the above appointment.

The appointment will be subject to the Probation Rules, 1949, and 1950, and the salary will be in accordance with such rules and subject to superannuation deductions. The successful applicant may be required to undergo a medical examination.

Forms of application may be obtained from the undersigned and applications should be received by me not later than July 7, 1951.

NEVILLE MOON,
Clerk of the Probation Committee.

County Hall,
Hertford.

BOROUGH OF WHITEHAVEN

Legal and General Assistant

APPLICATIONS for the appointment of a Legal and General Assistant are invited from persons having had good conveyancing and other legal experience in either a solicitor's office or in the legal department of a local authority. Experience of clearance schemes and of Committee work an advantage. Salary within the scale £570/£620. Housing accommodation will be considered if required and payment of removal expenses on the Council's usual terms will be granted.

The appointment will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age, past and present appointments and experience, together with copies of two recent testimonials, should reach the undersigned not later than June 26, 1951.

Canvassing will disqualify.

W. H. J. BROWNE,
Town Clerk.

Town Hall,
Whitehaven,
June 8, 1951.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXV. No. 25. | LONDON : SATURDAY, JUNE 23, 1951 | Price 1s. 8d.
Pages 383-398 | Offices : Little London, Chichester, Sussex. | [Registered at the General Post Office as a Newspaper] | (including Reports)

NOTES of the WEEK

Authority to Prosecute

The case of *Bob Keate, Ltd.* v. *Farrant* (1951) 115 J.P. 304, illustrates the necessity for the utmost care to comply with formalities which are essential to summary proceedings. The decision must have caused some authorities and their officials to reconsider their own practice.

A local authority passed a resolution to prosecute for an alleged offence against reg. 56A of the Defence (General) Regulations, and a firm of solicitors had been instructed. The clerk to the council laid the information, but he had not been generally or specifically authorized to prosecute on behalf of the council. Objection was taken on this ground, but the justices convicted. On a case stated, the Divisional Court quashed the conviction. Lord Goddard, C.J., observed that when the Control of Building Operations (Proceedings by Local Authorities) (No.1) Order, 1947, referred to the appointment of an officer it contemplated that there would be a formal appointment by resolution under s. 277 of the Local Government Act, 1933. In the absence of such resolution the clerk had no authority to take the proceedings.

Section 277 of the Act of 1933 provides : " A local authority may by resolution authorize any member or officer of the authority, either generally or in respect of any particular matter, to institute or defend on their behalf proceedings before any court of summary jurisdiction or to appear on their behalf before a court of summary jurisdiction in any proceedings instituted by them or on their behalf or against them, and any member or officer so authorized shall be entitled to institute or defend any such proceedings as aforesaid . . ."

As it was clear that the local authority intended to prosecute and could have done so lawfully by complying with the condition as to a resolution, it was unfortunate from their point of view that an irregularity in procedure proved fatal and that the case could not ultimately be decided upon the merits.

The Character of the Prosecutor

Although a witness may be cross-examined as to his character and antecedents with a view to discredit his testimony, it is not generally permissible to call evidence to contradict him on such matters as are not in themselves relevant to the issues being tried.

In *Phipson on Evidence*, 8th edn. p. 470, it is stated : " A witness may, upon cross-examination, be asked any question concerning his antecedents, associations, or mode of life, which although *irrelevant to the issue*, would be likely to discredit his testimony or degrade his character ; but he cannot always be *compelled to answer*, and his answers cannot, unless otherwise relevant to the issue, be contradicted." Certain exceptions to the general rule are then given. At p. 473, the following example is quoted : " So, though a female witness, who had denied on cross-examination that she was the kept mistress of the party calling her, was allowed to be contradicted, yet it would have been otherwise had the question been whether she was a common prostitute, since the former fact went to show bias, while the latter was merely collateral. *Thomas* v. *David* (1836) 7 C. and P. 350."

In *R.* v. *Wood* (1951) 211 L.T. 324, the defendant was indicted at Assizes on charges of robbery with violence and assault occasioning actual bodily harm. In cross-examination, the prosecutor was asked whether on the night in question he had made any improper suggestion to the defendant and committed an act of gross indecency against him. Counsel for the Crown wished to call evidence in rebuttal, to show that the prosecutor was of good general reputation, but counsel for the defence submitted that this was inadmissible, on the basis that, even if a person committed such an act on one occasion that was consistent with a good general reputation, and the only effect of such evidence would be to prejudice the jury against the defendant. Counsel for the Crown, in his reply, submitted that the case was analogous to cases of rape where a defence of consent was set up, when it was usual to ask what kind of reputation the woman held.

Morris, J., held that in the circumstances the evidence was inadmissible.

Remand in Custody

The case of the woman who was fined, after being remanded in custody overnight, upon a charge of taking growing tulips, to which reference was made in the House of Lords, provided an occasion for the Lord Chancellor to utter some words of guidance to justices upon the exercise of their powers of remand in custody.

Lord Jowitt evidently had in mind the provisions of the Criminal Justice Act, 1948, on the subject of remand after conviction, for the purpose of inquiry, examination and report in suitable cases, and he pointed out that such remands may be on bail or in custody. Without reflecting on the competence of the magistrates or passing censure on them, he expressed his disagreement with what they had done, as appearing rather like punishing twice for one offence, and added that in his opinion

it should be exceptional to remand in custody a woman who has young children to look after at home. Moreover, it was not right to use remand in custody as an additional means of imposing punishment.

The latter point was clearly laid down by the High Court in the case of *R.* v. *Toynbee Hall Juvenile Court Justices, Ex parte Joseph* [1939] 3 All E.R. 16.

Bail and Previous Convictions

It was definitely laid down by the Court of Criminal Appeal in *R.* v. *Fletcher* (1949) 113 J.P. 365, that justices are entitled to take a prisoner's previous convictions into account upon an application for bail, and that it is right and proper for the police to mention them as a ground upon which they may be justified in opposing the grant of bail. In that case it was stated that the newspapers concerned had acted properly in refraining from publishing the fact of the convictions.

The question of publication was raised in the Court of Criminal Appeal recently (*see The Times*, June 5), upon an application by a man for leave to appeal against conviction on the ground that his trial at quarter sessions was prejudiced by the publication in newspapers a week earlier of his previous convictions.

The application was dismissed, but in the course of the judgment it was stated that so far as the Court of Criminal Appeal was concerned, it had no power to control the press, but it agreed that it was undesirable that such information should be published. The fact that the information had been published was not however a ground for assuming that the jury had read it or had been biased by it.

A practice adopted by some benches is to have particulars of the previous convictions in writing and seen by the bench and the prisoner, but not read aloud. This makes it certain that they will not be revealed in the press, and seems a convenient and proper method of dealing with the matter. The police need not mention in public the fact that there are previous convictions, let alone the details of such convictions.

Probation in Essex

The change made by the Criminal Justice Act, 1948, whereby the probation officer responsible for supervision is not named in the probation order, a petty sessional division being named instead, was not generally welcomed by probation officers. However, in his report on the work of the probation officers in Essex for the year 1950, the principal probation officer, after referring to the advantage sometimes felt in enlisting the services of both a man and a woman officer, says: "Although most probation officers felt that the new provisions of the Criminal Justice Act, 1948, for naming the probation officer of a petty sessional division impersonally as supervisor, in place of the former provision for actually naming the supervising officer, was a retrograde step, it is possible that this change may have an effect, probably not in the minds of the legislators, of turning probation officers' attention to a closer study of the possibilities of team work." This team work is obviously appropriate in many matrimonial cases, and Mr. Eshelby shows how the principle is capable of extension to other cases, citing an example where a girl under supervision, who had become afraid of an exacting father, gained confidence through meeting several times male colleagues of the officer who was exercising supervision. With this team work constantly in mind it is natural that the probation officers in this area should hold frequent conferences.

The use of probation homes and hostels, especially for those young people aged seventeen to twenty who appear to be in need of some kind of institutional treatment, is recommended, but the report emphasizes the need for careful inquiry before an order is made containing a requirement as to such residence, since sending unsuitable persons does them no good and acts adversely upon other inmates.

Probation officers are often asked to make some inquiries about a boy's home when the question of home leave from a borstal institution is being considered. On this subject the report states: "A period of home leave, besides being a valuable part of training, does give opportunity for the probation officer as the prospective after-care supervisor, to make early contact with the lad and his home, to assess the situation and discuss plans for resettlement on discharge." Co-operation between various types of institution and the probation officers who may be called upon to exercise after-care is evidently developing on satisfactory lines. Co-operation which begins while a man is still serving his sentence, may allay some of his personal anxieties and also give a better prospect of successful after-care work.

Parental Responsibility

It is constantly being said, and with some truth, that present-day parents have little sense of their responsibilities towards their children. Of course there are still many to whom this does not apply, but there are far too many to whom it does. These welcome any opportunity of handing over their children to public bodies, and we notice that reports of children's committees established under the Children Act, 1948, show that local authorities are aware of the need of reminding some of the parents who ask for children to be received into care that they ought first to explore every possibility of making arrangements within the family circle.

Local authorities, like the courts, have the welfare of children at heart, and sometimes feel constrained to act in the interest of the child even if it means allowing a neglectful parent to escape his duties. Where this happens, the parent should at all events be ordered by a court to pay the maximum weekly sum he can afford.

It is sometimes difficult to decide who ought to take action and under what statutory authority. A child may be brought before a juvenile court as in need of care or protection, in which case certain facts must be proved, or he may be received into care by the local authority under the Children Act, again upon certain stated grounds. If different bodies take different views as to who ought to act, the child may be left without necessary care and help. We read recently of a case in which a court felt that, on the face of it, the wrong procedure had been adopted, where it was clear that different bodies concerned were of diverse opinions. However, as might be expected, the case was not dismissed out of hand, but was adjourned for further consideration, and whatever happens, the welfare of the child will now be looked after by someone. What is necessary, and is generally forthcoming, is a desire on the part of the various authorities to work together, whatever differences of opinion may be revealed, so that children may not suffer, and, at the same time, that everything possible should be done to induce parents to realize and perform their duties instead of trying to transfer them to others. The new children's committees and children's officers may, we feel confident, be trusted to have this always in mind.

Jezebel

The Conservative member of Parliament, who in the House of Commons queried the giving of instruction by a local education authority to its older girls upon the proper use of cosmetics, may have been inspired by the spirit of Gladstonian economy or by

the spirit of Tertullian and Clement of Alexandria. Or being (according to the books of reference) a journalist by profession, he may have foreseen a sequence of interesting paragraphs. Tertullian doubted whether it was safe to use false hair, since its previous owner might now be in Hell, and Clement whether the virtue of the laying-on of hands could penetrate a wig. Just so, our Victorian grandparents were sure that paint and powder spelt perdition ; though not many will say the same today, there will be some to echo Gladstone and Tertullian unconsciously, by suggesting that the female young of the human species can learn their painting and their powdering from the girl next door. The fact that a local education authority in the twentieth century has decided to apply in this superficial sphere the Victorian maxim, that a thing worth doing at all is worth doing well, is presumably among the proofs of progress. To say this is not to commit ourselves to the opinion that the notion is a good one. Teachers complain that the curriculum is already overcrowded, parents, that it contains too little that is practical, and local education authorities that women teachers are harder than ever to recruit. At the present day, few people would maintain that the arts and graces ought to be excluded from education at the level of the secondary or even of the primary school, but we shall be surprised if the example of the paint and powder county is very widely followed.

Cab Fares

The rather formidable increase of London cab fares which came into force on June 4 (two-thirds increase on the fare by time and distance shown upon the taximeter, *plus* an extra 6*d.* for a second passenger), is bound to stimulate the movement towards an all-round increase of cab fares in the provinces. More than a year ago, when London cabs received their first increase since 1934, members of the House of Commons suggested that the Home Secretary should authorize a similar increase outside London—only to be told, of course, that he had no power to do so. Indeed, Mr. Chuter Ede declined to recommend provincial local authorities to increase their fares by byelaw, saying that he preferred to leave to them the making of the first move.

The main factors which have brought about the London increases (two in 1950 and one, so far, in 1951, with a further new scale announced in Parliament to come into force later in the year) are common to London and the provinces, namely the scarcity of materials and new taxation—much the same as the causes of general inflation, but with petrol and rubber as especially inflating factors.

Where the fares fixed by byelaw have not been increased, it is inevitable that a conventional fare will grow up—so it will where, as in many districts, no byelaws exist fixing fares. But whereas no harm is done by a conventional fare, settled by supply and demand, in the absence of byelaws, such a fare which contravenes byelaws fixing a lower fare is dangerous and objectionable. Between the wars many tables of fares, embodied in byelaws dating from last century, were got rid of by county review orders and otherwise. Where this was done and new byelaws were not made, all is well. Where new byelaws were made between the wars fixing fares according to the then prevailing value of money, all was well at first, but cannot be well now. The least the local authority can properly do when its legal fares are out of date is to repeal them ; if it puts no new fares in force, no great harm is usually found to occur. The worst of all situations which can arise in this context is found when a local authority purports to authorize an increase of fares (beyond what is fixed by a byelaw left unaltered) by resolution or other irregular proceeding. This is a trap, both for the cabmen and the passenger : especially is it unfair to the cabman, who will naturally suppose that he is safe in acting upon the local authority's resolution, and may then find that he has no answer to a charge under s. 58 of the Town Police Clauses Act, 1847.

Aldermen

" Chang," said Sir John Pilgrim, " give the Alderman an egg." The Three Jovial Huntsmen had probably no definite opinion about the utility of aldermen ; they had no reason to be hostile, but can scarcely have been enthusiastic. Restoration drama regarded the alderman chiefly as a butt, probably with horns. In our own less ribald age he is, as in the Five Towns novels, still a little comical, and at the same time is attacked as an anachronism; like London squares and dinner suits, as an undemocratic survival, if not a piece of feudal tyranny. In days before " Labour " conquered so many of the larger local authorities, there was a widespread opinion in this sense in Labour Party circles ; occasional episodes like the filling of the aldermanic seats after the last election of London county councillors may or may not have led to a kindlier view. Even if they held office for the same period as councillors, aldermen could be attacked upon the ground of their not being subject to direct election—a ground of attack popular among those who consider that the exercise of any governmental function by persons not directly chosen for its exercise is wrong in principle. The town council of Brighton (we gather) have directed their attention to this latter point, in suggesting that aldermen should be elected by popular vote instead of by their councils. Having failed to obtain support from the general purposes committee of the Association of Municipal Corporations, the Brighton council are now canvassing other councils for support for their plan. Coventry have gone further, and plumped for abolition. For our part we think it would be a pity to get rid of aldermen, merely on the ground that they are a relic of the past. In the reformed municipal corporation they have lost their former life tenure ; it is after all not so very long (as the life of English institutions goes), since Parliament invented county aldermen in 1888, or even since it reformed the borough aldermen in 1835. We would leave the two systems (*i.e.*, that of councillors with aldermen and councillors without aldermen) to grow together until the harvest ; let it be seen in thirty years or so how the different types of council have coped with the circumstances with which local government will have to deal in the next few years.

Co-ordinating Advisers

A correspondent actively engaged in local government in southern England, who has, we understand, been chairman of various committees of his own local authority, and during the war performed unpaid executive functions in local government war work, sends a suggestion which is interesting, though not likely to commend itself either to central governments (in this country) or to the local government world. This is that the Government should appoint what the author of the suggestion calls " legal and administrative advisers " to local authorities, for the purpose of keeping committees and principal officers in line with one another, and with the national policies embodied in statutes. In support of his suggestion, our correspondent refers to the method now generally in vogue, of treating the town clerk or clerk of the council as a local authority's principal officer, with a duty to keep in touch with all departments of the council's work, even though these departments are under the executive control of their own specialized departmental heads. The suggestion is supported by alleging that the work of local

authorities has now become too voluminous to be adequately controlled by a single officer and his staff, so that the alternative to a falling apart, in respect of policy, of the different specialized departments is (our correspondent considers) to bring in advisers familiar with the general practice of local authorities and acting under the auspices of Whitehall. From one point of view, such an administrative adviser might be regarded as an alternative to the regional officers who were sent out from Whitehall to look after the interests of civil defence and other matters in the war. A good deal of the regional organization then set up has continued, with more or less variation of form and nomenclature; the present suggestion may be intended to weaken the position of the departmental regional offices, whilst putting at the disposal of local authorities the same sort of decentralized guidance as was obtained from them in the war. The suggestion made is that the advisers should be drawn from the ranks of retired administrators, members of the legal profession, and other persons of experience, and a central feature is that the appointees should be unpaid—so that neither the taxpayer nor the ratepayer would have to find more than limited amounts for their travelling expenses and perhaps small office staffs. Apart from being unpaid, the advisers would be rather like the British Residents in the former Native States of India and Malaya. It might be unkind to suppose that the gentleman who puts the suggestion forward sees himself circulating in a topee and cummerbund through a group of local authorities. We notice the suggestion because it is ingenious, and so far as we know original, but in English local government as it exists, and as it seems likely to exist in future, we see no place for giving effect to a suggestion of this kind.

LAW OF THE FOREST

By ERNEST W. PETTIFER

For three centuries at least the terrors of the forest laws of the Norman Kings bore heavily upon the English people and their countryside. A third of the country was under the dark shadow of these oppressive laws, and the story of those times is a sombre one in almost every detail. The Conqueror, Red William, and the first Henry, carried out from year to year the dispossession of large numbers of the common people from their homes and lands; their small villages and hamlets were razed to the ground, and their churches destroyed. The area preserved for the King's hunting and sport grew apace, and the steps taken to preserve the forest, parks, warrens and chase, led to the maintenance of an ever-growing army of foresters, verderers, regarders, agisters, and the other orders of gamekeepers.

Special courts—the attachment courts, the special and general inquisitions, the rather vaguely-defined swainmote, and others—were all responsible to the Justices in Eyre, those powerful groups of justices appointed directly by the King to administer the forest law, and responsible only to him. The common law, so the monarch held, did not run in his preserves, and he could lay down his own code of law for the protection of his game. And there was no one to gainsay him. The confused and turbulent reign of Stephen may have brought some relief to the oppressed English people, for that incompetent ruler had his hands full in trying to keep his own throne, but the Norman policy was resumed and strengthened in the reign of the second Henry and his sons, Richard and John.

Up to the time of Magna Carta, the cruelties and savagery let loose and organized by the Norman Kings in defence of their sporting rights had been unchecked. The law of the forest had two main aims—the suppression of the poacher, and the raising of large revenues for the king by the imposition of fines for the most trivial offences, whether proved or not. There are few records of pre-Magna Carta times available, but it is clear that the great army of gamekeepers (to use a generic and understood word) employed the most summary of methods in their battle with the always-increasing army of outlaws created by the system, and the local poachers. Men were grievously mutilated by the loss of eyes, hands, and feet and in other more terrible ways, and even the inoffensive trespasser was often clubbed into unconsciousness and then thrown into the sheriff's prison or the lord's dungeon to await trial.

The Justices in Eyre held their Assizes of the Forest at long intervals; probably the average time between them might be seven years; there are indications that sometimes the interval was even longer. Poachers who had not been granted bail, or, if granted it, had been unable to find sureties, would lie in the prisons the whole time, under dreadful conditions. There is one case on record in which an alleged offence was not tried until ten years had elapsed.

In barest outline this was the position before Runnymede. There had been statements as to the forest law issued by the kings who preceded John, and which had, perforce, to be accepted by both barons and people, although unwillingly, but in 1215 the barons gave the first real check to a Norman king, and imposed the first limits on what had been an absolute and arbitrary authority. The barons were on delicate ground when, in addition to the reform laid down by Magna Carta, they compelled the unwilling king to issue also the document known as the Charter of the Forest. Much of the land which the king and his predecessors had appropriated for their own pleasure had been the property of the lords. They were anxious to resume their own sporting rights over their own possessions, but it was certainly not their intention to ameliorate the lot of the common people.

There was a slight delay before the Charter of the Forest was first published in 1217 during the first year of the reign of John's young son, Henry III, and the document as it then appeared did not contain the whole of the reforms granted by the original Charter. The concessions issued by William Marshall and the Papal Legate on behalf of the boy-King, however, did outline a code which, had it been adhered to, would have lightened the burdens of the people. It was not adhered to, so much is clear. It is true that the Charter of 1217 was confirmed by successive kings repeatedly, but every confirmation was wrung from unwilling kings, who had no intention of observing the terms, or of sacrificing any of the great revenues brought into the royal purse by the vast system of fines from the numerous forests and other game preserves. There is no reliable record as to the area reserved for the king's sport, but an historian of the eighteenth century estimated that King John possessed sixty-eight forests, thirteen chases, and 781 parks (or enclosed woods).

These historical notes are necessary as an introduction to a review of the cases heard by the Justices in Eyre at the various Assizes of the Forest held at Northampton, Huntingdon, Oakham, Shrewsbury, Sherwood, etc.: The rolls of these courts, admirably translated and preserved by the Seldon Society over

fifty years ago, under the editorship of F. W. Maitland, are available (vol. 13) under the title, " Select Pleas of the Forest," and they throw a vivid light upon the incidents of the " poaching war," as it has been described, in its early days seven centuries ago.

The cases of Peter Tanet and Richard Gerewold were tried at Northampton in 1209. It was alleged that they had been seen in an enclosure in the forest (presumably one of the parks) with bows and arrows. Showing great wisdom Peter and Richard failed to appear. They would be in no doubt as to what would probably happen to them if they put in an appearance, and, like hundreds of other amateur sportsmen, decided that outlawry at least left them in possession of their eyes, hands and feet, and, more important, life itself. The court, thwarted in its desire to deal with the trespassers in person, seized Peter's six acres, and the township to which they belonged was declared to be " in mercy." This did not mean that the court were merciful, for the Latin word constantly used in such pronouncements meant that the whole hamlet or village were amerced, or fined, because of the flight of their two former inhabitants.

It may be best to indicate the legal points which emerge from our quoted cases as we reach them, and in the above incidents three points may be noted. The first is that, although it had been expressly laid down in the Charter of Henry II that " No man shall henceforth lose life or member for our venison," the poacher, having seen sufferers who had been blinded or maimed amongst the members of his own community, was chary of assuming his own safety if he appeared before the court. Outlawry almost always followed absence, but he generally accepted that as the lesser evil. Our second point is the extensive use made of sureties in those far-away days. Throughout the centuries the practice of insisting on pledges from the poacher has persisted, and it is still the law (Night Poaching Act, 1828). And finally, the threat to the community for the misdeeds of its individual members was a very real one, involving, in almost every case, pecuniary loss to the whole of the small community to which the offender belonged.

A brief record of the same Assize runs thus : " Ralph, the son of Hugh of Chalcombe, and Hugh of Barford, are in mercy because they had not Walter of Ringsdon, whom they pledged, who was taken with a bow and arrow in the forest, and it is said that he is dead." In numerous entries in the rolls, there appears this ominous entry announcing the death of the accused. A very large proportion of these men did not die natural deaths. They died from injuries inflicted by the brutal guards of the king's lands. Yet, it will be seen above, the pledges did not escape the consequences of the dead man not being before the court.

Nor, though a man were manifestly innocent of any crime, did this avail him. This is quite evident from the following story. The narrative is clear and unambiguous. " The whole township of Newton is in mercy for the flight of Richard Gelee, their reaper, who was accused of a buck, shot in the short wood of Nassington, for which Henry, the son of Benselin was taken. The foresters found in the wood a doe with its throat cut, and hard by, Henry lying under a bush. And they took him and put him in prison. He comes before the justices and denies that he ever knew anything of that doe, except only that he went into that wood to seek his horse. The foresters took him and led him to that doe. The foresters and verderers being asked if he were guilty thereof *say that they do not think that he was guilty*, but they believe rather that Richard Gelee, the reaper, of Newton, is guilty thereof, because he fled as soon as he knew that Henry was taken. And because Henry himself has taken the cross, *and is not suspected and has lain for a long time in prison*, it is granted to him that he may make his pilgrimage, and let him start before Whitsunday ; and, if he return, *and find pledges*, let him remain in the forest."

Still gleaning from the records of the same assize, the head of a hart found in a man's wood led to widespread trouble, fines and confiscations. Henry Dawnay, the owner of the wood, knew nothing of the head. His forester was dead, the record says. There is the unanswered question in the mind of the reader—was the forester's death caused by the king's foresters ? Certainly there was not a trace of evidence connecting Henry with the deer's head found in his wood. Nor is there any uncertainty in the decision of the court—" The whole town of Maidford was seized into the King's hand, with the wood belonging to the same town, on the ground that the aforesaid Henry can certify nothing of that hart." A footnote indicates that Henry decided to make the best of a bad job—" Henry Dawney gives two marks for having in peace his wood which was taken into the King's hand." Whether the unfortunate town was ever able to redeem its own area we do not know.

Several entries make mention of " hue and cry," that mediaeval principle which laid down that, on occasion, every man must act as a part of the police system. Here is a typical entry : " The Prior of Wenlock's township of Marston in Warwickshire is in mercy because they did not raise the hue and cry on evil doers to the King, that is to say, upon Elias Horstail *of the same town* and Ranulph the reaper of Hardwick. They were seen by the men of Bodington, where they killed a hind in the field of Bodington. And they fled and escaped from those men ; and they are to be exacted by the County." The words italicized probably give the clue to the reluctance of the men of Marston to join in the hue and cry. The known fact that one of their own men was involved explains their slowness in joining in the pursuit, and the same reason may be deduced from the failure of other villages to follow a wrongdoer.

At both the Northampton and Oakham Assizes of the Forest in 1209, cases were dealt with of unlawfully possessing bows. At Northampton Ralph Neirhut of Threwelton was amerced for having a crossbow and a bow without warrant. At Oakham " Ralph de Martinvast gives twenty marks that he may be quit of this, that his son was found on the high road in the forest with a bow without a string." The substantial fine of £13 6*s.* 8*d.* offered by the father may have been due to the imprisonment of the boy until the father bought his release.

An entry in the Pleas of the Forest of Shrewsbury (10 John) briefly recounts an exciting story. " Richard of Bolton, Wilkin of Eastleigh, Hulle of Hinton and Hulle of Roebuck, the sergeants of the county, found venison in the house of Hugh le Scot. And Hugh fled to the Church. And when the foresters and verderers came thither they demanded of Hugh whence that venison came. And he, and Roger of Wellington, acknowledged that they had killed a hind from which that venison came. And he refused to leave the church, but lingered there for a month, and afterwards escaped in the guise of a woman, and he is a fugitive, and Roger of Wellington likewise. And it is ordered that unless they come . . . let them be outlawed.

" The townships of Wellington, Arleston, Lawley and Ketley are in mercy because they denied what they had previously acknowledged."

Apart from the search of Hugh's house (many of the game laws down through the centuries contained this power to search) and the sentence of outlawry, which, as we have observed, was constantly used, the outstanding points in the story are the hunted man's use of the right of sanctuary, which the keepers did not dare to violate, and the romantic escape through the cordon which probably would be thrown around the church.

(To be continued)

FORFEITING AND RESTORING PENSIONS

By s. 4 of the Police Pensions Act, 1948, a police authority is empowered to forfeit a pension which has been awarded and is being drawn, in certain events, such as conviction of an offence carrying a serious sentence, engaging after written warning in an illegal business, or engaging after written warning in a private detective's business—and in some other events. Article 28 of the Firemen's Pension Scheme, 1948, S.I. 1948 No. 604, made by the Home Secretary under powers given by s. 26 of the Fire Services Act, 1947, contains a parallel provision, not quite so elaborate, in which the operative verb is not "forfeit" but "withdraw." The decision may in either case be to take away the pension (to use a neutral term) permanently or for a period, and wholly or in part.

Two questions arise on each of these parallel enactments. Can the pension authority, in deciding upon a period instead of upon a total taking away, leave the period unspecified (*e.g.*, express the forfeiture or withdrawal as being during the currency of a convicted pensioner's actual imprisonment), and can it having decided upon a permanent taking away, or a taking away for a long period, think again and restore the pension?

We will discuss the problems first in relation to the policemen, both because his right is the older and because in his case the word used by Parliament is "forfeit" which, in our opinion, has a legal implication which may or may not attach to the verb "withdraw."

We cannot point to compelling authority, but the whole structure of s. 4 of the Act of 1948, its history, its parallel with s. 2 of the Forfeiture Act, 1870 (of which more below), and the use of the word "forfeit," which for centuries has been more or less a term of art, lead us to the conclusion that the pension authority must decide at the outset between forfeiture for good, forfeiture for a fixed term, or no forfeiture at all—they have not the option of forfeiting during an indeterminate period such as the actual duration of a prison sentence. This, however, is much less important than the second half of the problem—having reached a decision, can they afterwards reverse it by restoring that which they have forfeited? Not only is this question the more important in practice: it is the more difficult as a matter of construction of the statutes.

The right to "forfeit" has, it seems, been taken as a matter of course in regard to a policeman, and from him extended to the fireman, whose pension rights are more recent, although s. 4 of the Police Pensions Act, 1948, is a good deal less drastic than s. 15 of the Act of 1921, and the Firemen's Pension Scheme is less drastic still. It is however, not altogether so obvious that a power ought to exist, to forfeit a pension which the man has earned.

Speaking of forfeiture and other incidents of treason and felony, FitzJames Stephen in his *History of the Criminal Law* says that these have their source in the feudal theory that property, especially landed property, was held of a superior lord upon the condition of discharging duties attaching to it, and was forfeited by the breach of those conditions. They have no history at all (by which Stephen means that they were so much a matter of course that Parliament never had to deal with them), but prevailed from the earliest time till the year 1870, when they were abolished by 33 and 34 Vict., c. 23, s. 1, except in the case of forfeiture consequent upon outlawry. "Some of the provisions by which they were replaced appear to me [says Stephen] exceedingly objectionable. It is provided by s. 2 that upon a conviction for felony and a sentence of twelve months' imprisonment or upwards or imprisonment with hard labour for any term the convict shall forfeit any military or naval office or any civil office under the Crown or other public employment, or any ecclesiastical benefice, or any place, office, or emolument in any university, college, or other corporation which he may hold, and also any pension or superannuation allowance or emolument to which he is entitled. [Stephen here omits the words, on which much turns as we shall show, "payable by the public or out of any public fund."] He continues: "I think that the question, whether a person should on account of a conviction of felony followed by a sentence of imprisonment and hard labour be deprived of official employment or ecclesiastical preferment, should be left to his official or ecclesiastical superiors, just as the question whether a barrister should be disbarred upon a conviction is a question for the benchers of his Inn. To deprive a man of a pension or superannuation allowance, which is in reality deferred pay earned by work done, is to keep up the principle of forfeiture of property as a punishment for crime in a special class of cases when it has been given up in all others. Two officers of a bank are convicted of a forgery for which each is sentenced to a year's hard labour. One is a retired Indian civilian with a pension of £1,000 a year; the other has bought a life annuity of the same amount out of his savings in a profession. Why is the one to lose his pension and the other to keep his annuity? The pension is just as much property as the annuity. It is part of the consideration for which many years of labour were given. Apart from this why, when removing an admitted grievance, keep up a perfectly irrational distinction between punishment of felons and the punishment of misdemeanants? Suppose that two other persons, directors of the same bank, had fraudulently misappropriated its funds in concert with the two forgers, but by means amounting only to misdemeanour. If they held pensions or commissions they would forfeit nothing, even if they were sentenced to penal servitude. Surely this is highly unjust. It seems to me that the whole Act, except the section which abolishes forfeiture, should be repealed. If its provisions are not wanted in cases of misdemeanour they are not wanted at all."

What FitzJames Stephen said upon this topic has not, however, prevailed—s. 2 of the Act of 1870 is still in force. When Acts were passed giving pensions to policemen, it looks as if a sentimental feeling existed, that an ex-policeman ought to be above suspicion, or it may have been a practical appreciation of the fact that a man who is obliged to retire in the prime of life, after becoming professionally acquainted with all sorts of shady characters and methods of circumventing the law, may be exposed to temptations which scarcely beset (for example) the sixty-five year old local government officer. There is thus, for giving specific power to forfeit an ex-policeman's pension in certain contingencies, a practical reason which does not exist where the ex-local government officer is concerned. Why the ex-fireman has been put on the footing of the ex-policeman rather than the ex-local government officer can, however, not be thus explained.

Upon the question whether a forfeited pension can be restored, under the Police Pensions Act, 1948, the negative view is indirectly supported by s. 70 of the Criminal Justice Act, 1948. Before 1870 forfeiture was, as FitzJames Stephen says, a normal incident of conviction for felony at common law, and it was also part of the penalty imposed by statute upon conviction for

certain offences, which need not be considered in the present context: they relate to foreign enlistment and ecclesiastical matters. Section 2 of the Forfeiture Act, 1870, retains the penalty in a modified form upon a conviction for felony (whatever other punishment be imposed) and upon conviction for misdemeanour if the punishment imposed exceeds imprisonment for twelve months. Section 70 of the Criminal Justice Act, 1948, with sch. 10 to that Act, made the appropriate amendments in s. 2 of the Act of 1870 in regard to the types of imprisonment involved, *i.e.*, did away with the reference to penal servitude and hard labour, and inserted references to preventive detention and corrective training. It did not, however, interfere with the primary enactment in s. 2 in the Act of 1870, imposing forfeiture of various public offices and of certain pensions, as an additional penalty for offences of the prescribed degree of gravity. As we have seen (and FitzJames Stephen forgot to say), the pensions thus automatically forfeited are those "payable by the public [an odd phrase] or out of any public fund." It would involve much research to make a list of pensions to which this enactment applied when it was passed. The context indicates that what Parliament had chiefly in mind were army and navy pensions, and pensions to other persons in the service of the Crown. Whether the enactment applies to pensions payable under the Local Government Superannuation Act, 1937, is thought by one at least of the text books on that Act to be arguable. That book quotes the decision in *Slingsby* v. *Grainger* (1859) 28 L.J. Ch. 617, for the proposition that the expression "public fund" means the same as "government funds," and so far, if the decision were in point at all, the conclusion would be that a superannuation allowance granted under the Local Government Superannuation Act, 1937, was not subject to forfeiture under s. 2 of the Act of 1870. The text book in question goes on to argue, however, that a local government superannuation allowance is nevertheless caught by s. 2 of the Act of 1870 because the block grant goes in aid of the local authority's general funds, and the local authority's share of the superannuation allowance (that is to say so much as does not represent the local government official's own contributions to the superannuation fund) is drawn from moneys paid in part by the block grant. This, with all respect to the author of the text book, seems a far fetched argument which, if pursued, might lead to the conclusion that s. 2 of the Act of 1870 operated upon so much of the superannuation allowance as could be traced to the block grant, but not upon so much as corresponded to the deductions made during the pensioner's service, or perhaps to so much as corresponded to the local authority's equivalent payments into the superannuation fund out of their own rate moneys. That it is not beyond the ingenuity of the courts, to puzzle their heads and those of the persons concerned with problems of this sort, is shown by cases under the former Workmen's Compensation Acts, where compensation was in some cases cut down by reference to an insured workman's entitlement to a pension, with various subtleties about the cases where the cutting down should be applied. It may, however, be suggested with some confidence that the line of argument above set out is misconceived. It seems worth mentioning that the learned editors of *Lumley*, in their annotation of s. 24 of the Local Government Superannuation Act, 1937, have not thought it necessary to deal at all with the question of forfeiture under the Forfeiture Act, 1870. Section 24 of the Act of 1937 provides for forfeiture (using that verb) but only of the right to claim a superannuation allowance, that is to say, is concerned only with offences committed by the potential recipient of that allowance before he has become qualified for it. Taking s. 24 of the Act of 1937 by itself it seems that, once a local government official has finished his qualifying service and obtained a superannuation allowance, he may commit every crime in the calendar without having it forfeited. It may be that when the Local Government and other Officers Superannuation Act, 1922, was passed the promoters considered the point, and thought that s. 2 of the Forfeiture Act, 1870, was sufficient, or it may be that they thought it unfair to deprive a man, because of misconduct after his retirement from local government service, of a superannuation allowance which he had earned by that service. The Act of 1922 was not a Government measure, and whether the explanation is that its promoters took the line of reasoning just sketched, or that they had s. 2 of the Act of 1870 in mind and considered that this section would operate upon a local government superannuation allowance, does not seem to be on record. However this may be, the Act of 1937, which generalized the pension rights of the Act of 1922, is completely silent about forfeiture for subsequent misconduct, as are the parallel enactments of the Poor Law Officers Superannuation Act, 1896, and the Fire Brigades Pension Act, 1909.

Returning to the text book argument in regard to the block grant and *Slingsby* v. *Grainger*, it may be pointed out that this decision had nothing at all to do with s. 2 of the Forfeiture Act, 1870, or any other forfeiture. It related to the language of a will, by which the testatrix, who was possessed of property both in consols and in bank stock, gave her brother (who received all the income from her property, and acted as her banker) "everything I may be possessed of at my decease for his own life, and should he marry and have children of his own, to those children after: but should he die a bachelor I leave the whole of my fortune now standing in the funds to Emma Slingsby, my god-daughter." The brother died a bachelor and it was held that under this will the bank stock did not pass to Emma Slingsby. When Lord Chelmsford said that the words "the funds" as used by the testatrix meant the same thing as government securities, he was not thinking at all of forfeiture, and it may be said with some confidence that citation of this case in this context is not relevant. If this is so, it is unnecessary to follow the text book into the rather fantastic argument about the block grant, with the possible conclusion (to say the least) that forfeiture operates upon a fraction of a local government pension and not upon the rest. Bearing in mind that in 1870 Parliament had not passed legislation granting pensions to public officials (or at any rate not the present wide range of officials) outside the ranks of servants of the Crown, and that subsequent legislation granting pensions to these outside persons has apart from police and firemen been silent on the subject, one may proceed to consider the language of s. 2 of the Act of 1870 in its simple and literal sense. Taking that language as it stands, there seems no reason to suppose that it does not apply to pensions payable out of local funds, or out of local funds fed in part by government grants, equally as it applies to pensions paid wholly out of the Exchequer. The Act spoke of pensions payable by the public, as well as out of public funds, and the words are appropriate whether the public contributing to the pension comprises ratepayers or taxpayers or both. If this view be taken, it is curious that the Police Pensions Acts, from 1921 to 1948 inclusive, thought it necessary to include an express provision for forfeiture of police pensions. This can, perhaps, be explained on the footing that the government in promoting the Bills for those Acts, and Parliament in passing them, may have taken the view that offences by an ex-policeman were more reprehensible than offences by an ex-borough engineer; indeed what is now s. 4 of the Police Pensions Act, 1948, is a great deal wider than s. 2 of the Forfeiture Act, 1870. To some extent the provisions overlap, that is to say there are in each section provisions for forfeiture upon conviction for the same serious offences, but the police section goes on to provide the punishment of forfeiture for less serious offences, and for some

forms of conduct which are not offences at all against the law, such as (without permission) accepting a testimonial upon retirement, or becoming a partner in a private detective agency after being warned not to do so, and also for engaging in an illegal business even though the pensioner has not been prosecuted for so doing. It may be that, having decided to impose these forfeitures in s. 4 of this Act, and the more elaborate and drastic forfeitures in s. 15 of the Act of 1921, the draftsman included in it the provision for forfeiture after the more serious offences, in order to have the whole police forfeiture code in a single enactment, even though realizing that there was overlapping with s. 2 of the Forfeiture Act, 1870.

Whatever the reason for this overlapping, it must be taken as significant that the two Acts of 1948, namely, the Police Pensions Act and the Criminal Justice Act, which both deal with forfeiture of pension (using that word) deal with it differently. Section 70 of the Criminal Justice Act, after making the above mentioned amendments in s. 2 of the Act of 1870, goes on to provide what is not in the Act of 1870, that the authority responsible for paying a pension may restore it after forfeiture. In the Police Pensions Act, 1948, there is no corresponding provision, and it seems impossible to escape the conclusion that, in regard to police, the paying authorities having an option whether to forfeit a pension (whereas s. 2 of the Act of 1870 confers no option) were not intended by Parliament to have a power of reversing the decision they had reached.

It has already been mentioned that the Secretary of State's Firemen's Pension Scheme, made under statutory authority, does not speak of "forfeiting" a pension in the events there mentioned, but of "withdrawing" it. The Scheme, like the Police Pensions Act, 1948, says nothing about restoring a pension which has been withdrawn. It may be that when this scheme was made the Secretary of State had in mind some distinction between forfeiture and withdrawal; as against this, the actual criminal offences for which the ex-fireman's pension may be withdrawn as distinct from forms of conduct not criminally prosecuted are the same as those for which an ex-policeman's pension may be forfeited, and it seems difficult to build upon the foundation of a change of verb a power in the fire brigade authority to restore that which they have withdrawn. In other words, it seems that the better view under the Firemen's Pension Scheme as under the Police Pensions Act, 1948, is that the authority responsible for paying the pension, when it has once withdrawn it or forfeited it as the case may be, cannot reverse its own decision, in the manner in which under s. 70 (2) of the Criminal Justice Act, 1948, a paying authority can reverse a forfeiture which has taken effect not by the authority's own decision but by the automatic operation of s. 2 of the Forfeiture Act, 1870. If justification be sought for this difference, *i.e.*, for the absence of a power in the police and firemen's cases to undo what has been done, it can perhaps be discovered in this very fact: that forfeiture under s. 2 of the Act of 1870, as amended by s. 70 (1) of the Criminal Justice Act, 1948, is automatic; it is not ordered by the authority responsible for paying a pension or even by the court. Forfeiture under s. 4 of the Police Pensions Act, 1948, and under the Firemen's Pension Scheme is a discretionary decision. The authority is expected to reach this decision with a full sense of responsibility, and (if the view here taken is correct) in the knowledge that a decision once reached cannot be reversed.

A point which incidentally emerges from this argument is whether s. 2 of the Act of 1870, as amended by s. 70 (1) of the Criminal Justice Act, 1948, operates upon a pension already enjoyed by an ex-policeman or ex-fireman who is convicted of felony, where the paying authority do not exercise their discretionary power of forfeiting or withdrawing the pension under the specific enactments given the power to do so. It can be argued that the specific power ousts the general provision, and therefore that s. 2 of the Act of 1870 does not operate at all in these cases. It can on the other hand be argued that s. 2 of the Act of 1870 does operate, but that s. 70 (2) of the Criminal Justice Act, 1948, then comes into play and empowers the paying authority (which has already decided not to exercise its own power to forfeit or withdraw the pension) to undo the automatic effect of s. 2 of the Act of 1870. This is a very nice point, but it is not the point to which this article is primarily directed.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Lynskey and Devlin, JJ.)

June 11, 1951

R. *v.* CHRIST

Criminal Law—Larceny and receiving—Charges of both offences—Case one of larceny or nothing—Count for larceny only to be left to jury.

APPEAL against conviction.

The appellant was convicted at Hertfordshire Quarter Sessions of receiving stolen lead, he having been jointly charged with one B on an indictment which contained alternative counts for larceny and receiving. Evidence was given by the police that on the night when a house had been broken into and a quantity of lead stolen from it the appellant and B were seen in a field ninety yards from the house taking a parcel towards a tree, and that, when the contents of the parcel were examined, it was found to contain the stolen lead. The case was throughout treated as one of larceny or nothing, but the chairman left both the count for larceny and the count for receiving to the jury. On the count for larceny the jury acquitted both B and the appellant, and on the count for receiving they disagreed with regard to B, but convicted the appellant.

Held, that the verdict was unreasonable and that the conviction must be quashed.

Per curiam: Where an indictment contains alternative counts for larceny and for receiving, and at the conclusion of the evidence and counsel's addresses it has become apparent that the case is one of larceny or nothing, only the count for larceny should be left to the jury.

Counsel: for the appellant, *Fairbairn*; for the Crown, *Edward Clarke*.

Solicitors: *The Registrar, Court of Criminal Appeal*; *Solicitor for Metropolitan Police*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

June 4, 1951

R. *v.* ARMSTRONG

Criminal Law—Evidence—Newspaper report of proceedings—Reference to previous convictions of prisoner—Alleged prejudice—Not necessarily ground for quashing conviction.

APPLICATION for leave to appeal against conviction.

The applicant was convicted at Surrey Quarter Sessions on two charges of larceny in a dwelling-house and was sentenced to four years' corrective training. When he was before the magistrates he applied for bail, and, while they were considering the application, evidence was given of his previous convictions. Reports of the hearing subsequently appeared in local newspapers, and reference was made therein to the previous convictions.

Held, that though it was undesirable that there should be a reference in any newspaper to previous convictions of the prisoner which were disclosed at the hearing before the justices, the fact that there has been such a reference in a newspaper, either local or national, was not in itself a ground for quashing the conviction in a case where the evidence of the prisoner's guilt was clear.

Counsel: *John Harrington* for the applicant. No counsel appeared for the Crown.

Solicitor: *Reid, Sharman & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. v. LOUGHLIN

Criminal Law—Breaking and entering—Prisoner in possession of stolen property soon after breaking—Verdict open to jury—Direction.

APPLICATION for leave to appeal against conviction.

The applicant was convicted at East Kent Quarter Sessions of receiving stolen property, and was sentenced to six years' preventive detention. On the night of January 25/26, 1951, the pavilion of the Ashford Golf Club was broken into and a bottle of whisky and a bottle of cherry brandy were stolen. Within an hour or two of the breaking the applicant was stopped in Ashford by a police officer and the two bottles were found in his attaché case. The applicant said that he had walked from London and that he had bought the bottles with others for £5 from a stranger there. The deputy-chairman directed the jury not to consider the first count, which charged the applicant with pavilion breaking and larceny, and to concentrate on the second count, which charged him with receiving the two bottles, knowing them to have been stolen.

Held, that, where it is proved that premises have been broken into and property stolen therefrom and that very soon after the breaking the prisoner has been found in possession of that property, it is open to the jury to find the prisoner guilty of breaking and entering and they should be so directed, but that in the circumstances of the present case the court would not interfere with the conviction.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

INSTITUTE OF WEIGHTS AND MEASURES ADMINISTRATION

1951 ANNUAL CONFERENCE

The annual conference of the Institute of Weights and Measures Administration was held this year at Blackpool. After a civic welcome from the mayor, Councillor Joseph Hill, J.P., Alderman W. P. Jackson, J.P., chairman of the Manchester Watch (Weights and Measures) sub-committee presided over the opening session for the paper "*Fiat Justitia*" by J. A. Caesar, deputy town clerk of Rochdale. This was a consideration of the place of weights and measures offences in the general legal framework and the manner of dealing with them by legal process. The keynote of the discussion on this paper was the legal principles involved in all aspects of proceedings—from the detection of the alleged offences to the hearing of the case and the recording of the verdict. In the evening the delegates were received by the Mayor and Mayoress at a reception and dance at the Casino. For the second morning's paper—"A Short Guide to Electronic Weighing" by E. H. Griffiths, a district inspector of Weights and Measures for Essex, the chairman was Alderman A. Salisbury, deputy mayor of Blackpool. This paper was a review of progress so far made in electrical weighing devices of various kinds and dealt both with the principles involved and with some of the commercial units now in use. Discussion on this paper dealt as much with technical aspects as with the sphere of usefulness of the appartus. The Annual Luncheon was held in the Baronial Hall where among other guest speakers was Sir Edward Hodgson, K.B.E., C.B., Bart., chairman of the departmental committee of inquiry into weights and measures, and who proposed the toast of the Institute. The remaining meetings were presided over by members of the Council of the Institute. Mr. Peter Kerr, M.A., B.Sc., F.R.I.C., presented a paper on the "Precise Measurement of Motor Spirit in Small Underground Tanks" in which, among other things, the tank pressure test as a means of proving soundness was effectively removed from its pedestal of infallibility. The Food and Drugs meeting was devoted to the paper "Official Sampling and Analysis under the Food and Drugs Act" by Mr. J. H. Hamence, Ph.D., M.Sc., F.R.I.C., which was divided into three parts, "Historical," "Present" and "Future." The decline in the quality of milk was discussed and suggestions made for the solution of this problem.

As part of the conference there was an exhibition of standard weighing and measuring apparatus as used by inspectors of weights and measures.

THE COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY'S ANNUAL GENERAL MEETING

Many points of significance to all who are interested in the countryside, whether as owners, tenants or members of the public, were brought out by Sir Arthur Hobhouse, J.P., the president of the Commons, Open Spaces and Footpaths Preservation Society, at the Society's annual general meeting this month.

Speaking of commons (the preservation of which from inclosure was the Society's primary object when it was founded in 1865), he referred with approval to the statement of policy which was published in its Journal for January last, and which emphasized the need for it to continue to champion the rights of the commoners (still so valuable in many instances) and to insist on the indispensability of the commons in general as open spaces for recreation and tracts of natural scenery. Coupled with this must be effective measures for their management and improvement as common grazing grounds, so that they may play their part in maintaining the national food supply, failing which their claim to survival is bound to become increasingly precarious.

On the subject of the National Parks and Access to the Countryside Act, while recognizing the progress of the survey of public rights of way, he called attention to two dangers to its success, one, the existence of what he described as "pockets of apathy" towards the survey among local authorities, the other, the tendency of some parish councils to omit some public paths from their maps on the ground that they are "not wanted" by the local inhabitants—a tendency directly contradictory of the object of the survey, which is purely fact finding.

Under the head of "access to open country" (Part IV of the Act), he emphasized a point which is still not understood by many farmers and others who are nervous lest the effect of the Act may be to let loose hordes of townsfolk over the countryside, namely, that the "review" of open country which local planning authorities are required to make, does not create any public rights of access at all; these can only be conferred by an access agreement or order, or acquisition by the authority, relating to particular areas of land, with ample safeguards in each case for the interests of the owner or occupier.

Of the National Parks themselves, he was able to point with satisfaction to the fact that three of the areas proposed by the Hobhouse committee—the Peak District, the Lake District and Snowdonia—have already been "designated," and that in determining the boundaries of these areas the recommendations of that committee have been very closely followed. The greatest danger, he suggested, to the National Parks would be the activities of Government departments and other statutory authorities, claiming priority, in the "national interest," over all other planning considerations.

He welcomed the issue, by the National Parks Commission, of the "Country Code" of behaviour for all the growing number of people, chiefly from the towns, who resort to the country for recreation, and on whose recognition of, and consideration for, the countryman's interests and his important services to the nation, the successful working of the National Parks Act largely depends.

Finally, he suggested that the Society's excellent relations with Government departments and the service to local authorities and the public which its experience and specialized knowledge enabled it to give, furnished every reason for supporting it. For some time past, however, it had been working at a loss which could not be allowed to continue, and ampler revenue from members' subscriptions was essential.

THE LOCAL GOVERNMENT LEGAL SOCIETY

A meeting of the Home Counties Branch was held on Friday, April 20, 1951, at the Law Society, 60, Carey Street, W.C.2, the chair being taken by Mr. E. Ronald West.

Mr. C. Eric Staddon, O.B.E., town clerk of Beckenham, addressed the members on the human relationships involved in the work of the town clerk under the title "Ourselves and Others."

At the conclusion of the proceedings, a vote of thanks to Mr. Staddon was proposed by Mr. J. N. Martin and seconded by Mr. A. W. Beer.

On June 1, a further visit was made to the Map and Information Rooms of New Scotland Yard by a party of members.

THE NATIONAL ASSOCIATION OF JUSTICES' CLERKS' ASSISTANTS

The Association held its thirteenth annual meeting in Birmingham, on May 19, 1951. Mr. Richard L. Barlow (Coventry) was elected president in succession to Mr. Cecil H. Geeson (Newcastle-upon-Tyne) who, having held the office since August, 1948, decided not to seek re-election.

Mr. J. B. Horsman (Sheffield) and Mr. R. F. Goldsack (Hastings) were re-elected as honorary secretary and honorary treasurer respectively, and three vacancies on the council were filled by the appointment of Messrs. C. H. Geeson, (Newcastle-upon-Tyne), H. Myers (Sunderland), and F. Priest (Sutton). Mr. W. J. Jefferies (Birmingham) was elected vice-president.

A membership of 611 was announced, and the formation of two new branches of the association, one in Middlesex and one in Essex, was reported. The meeting adopted a scheme of conditions of service for assistants, which it is hoped will become the basis for the employment of assistant clerks throughout England and Wales. It was announced that a committee has been appointed by the council to study the training and legal education of assistants, and that the council has decided to make the association's magazine *The Magisterial Officer*, published quarterly, available to justices and justices' clerks who are interested in the affairs of the assistants and are prepared to subscribe 7*s.* 6*d.* per year for the magazine.

ROAD AND RAIL APPEAL TRIBUNAL

The Road and Rail Appeal Tribunal has moved to 6, Spring Gardens, London, S.W.1. Telephone number TRAfalgar 6782/3.

"TAKING LONELINESS FROM OLD AGE"

Mr. Arthur Blenkinsop, Parliamentary Secretary to the Ministry of Health, told the annual conference of the Association of Hospital and Welfare Administrators at Bournemouth recently, of the progress which is being made to relieve the lot of old people.

"I want to see more attention paid to the needs of old people in their own homes," he said, "We must combine forces—official and voluntary—to avoid overlapping and to make sure that all who need them get the neighbourly services that can mean so much. We are out to conquer the sense of loneliness and isolation. I ask all local authorities to take the lead—not to supplant voluntary effort, of which we need more, but to encourage and help it.

"For those who cannot live in their own homes, 321 small residential hostels for some 8,000 old people are now run by local authorities under the 1948 National Assistance Act, and more are being opened every week. Some 400 are also being prepared.

"We hope to start this year with some long-stay annexes to our hospitals which should help to relieve the pressure of the 7,000 chronic sick waiting for beds today. But by improving our home services we can help to reduce that list too."

HOSPITAL SERVICE PLAN

We understand that a Hospital Service Plan has been brought into operation with the object of alleviating the expense of in-patient treatment in hospital private wards and nursing homes. The secretary of the London Association for Hospital Services, which is responsible for the inauguration of the plan, asks us to draw the attention of readers to the benefits available to subscribers. It is pointed out private ward treatment in hospital or nursing home gives these advantages, when the patient is well enough, of being able to receive visitors more frequently, and of using the telephone, thus maintaining contact with all his affairs. The costs of such treatment, plus surgeons, physicians, and the professional fees, can be considerable, but the payment of a moderate contribution under the plan can cover subscribers against such expenses, and it is pointed out that the removal of financial worry often speeds recovery. Those interested are invited to write to the secretary of the London Association for Hospital Services, Tavistock House (South), Tavistock Square, W.C.1, for fuller information.

SOCIETY OF LOCAL GOVERNMENT BARRISTERS

The annual general meeting of the Society of Local Government Barristers took place in the Council Room of the General Council of the Bar on May 28, when Mr. Roland J. Roddis (Eastleigh) and Mr. T. T. Thorpe (Potters Bar) were re-elected chairman and vice-chairman respectively. Mr. C. Richard Wannell (Southgate) was re-appointed secretary.

The report of the Executive Committee for the year ended April 30, 1951, stated that a feature had been the goodwill shown by the General Council of the Bar towards the Society as evidenced not only by the appointment in July, 1950, of the Society's nominee as one of the two additional members of the Council to represent non-practising barristers, but also by the Council's sympathetic understanding of, and efforts to assist in finding solutions to, the problems of local government barristers.

It was agreed to recommend members to refrain from making application for advertised posts of clerks of local authorities where the terms and conditions did not conform to the recommendations of the Joint Negotiating Committee relating to town clerks and district council clerks.

Membership of the Society (which is restricted to barristers who are clerks of local authorities or who are employed in clerk's departments of such authorities) had now reached ninety-three *per cent.* of possible.

For the information of intending members, the address of the Secretary is "Greenelm," Bramley Road, Southgate, N.14.

ROAD ACCIDENTS—MARCH, 1951

The return of all casualties in all accidents during March, 1951, is as follows :

	Died	Injured		Total
		Seriously	Slightly	
Pedestrians :				
(i) under fifteen	65	524	1,583	2,172
(ii) fifteen and over ..	148	832	1,858	2,838
Pedal cyclists :				
(i) under fifteen	8	124	498	630
(ii) fifteen and over ..	46	539	1,905	2,490
Motor cyclists	54	763	1,367	2,184
Other drivers	22	354	1,373	1,749
Passengers (sidecar or pillion) :				
(i) under fifteen	—	5	21	26
(ii) fifteen and over ..	12	166	356	534
Other passengers :				
(i) under fifteen	6	90	387	483
(ii) fifteen and over ..	43	630	2,663	3,336
Total	404	4,027	12,011	16,442

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 37.

A COAL MERCHANT'S ERROR

A registered coal merchant appeared before the Swansea stipendiary magistrate, Mr. H. Llewelyn Williams, K.C., on May 31, 1951, to answer ten summonses each alleging that the defendant, being a registered merchant, had supplied by retail a grade of coal in a district in which no price was specified in the schedule of prices for that district, contrary to art. 1 (2) (*a*) of the Retail Coal Prices Order, 1941, and reg. 55 of the Defence (General) Regulations, 1939.

The particulars of the charges varied in each case as to the name of the person to whom the coal had been supplied but all alleged the sale of a mixture containing garth nuts at a flat rate of 4*s.* 6*d.* a *cwt.*

For the prosecution, which was initiated by the Ministry of Fuel and Power, it was stated that the offences had occurred in January of this year, and that the case was of importance because a system had been set up to protect the public against overcharging and the defendant had ignored the system.

Upon the receipt of a complaint by one of defendant's registered customers the local fuel overseer visited defendant, who admitted mixing newland cobbles priced at 4*s.* 5*d.* a *cwt.* with garth nuts, a coal of inferior quality, which was not mentioned in the retail price order. Defendant admitted selling the mixture at a flat rate of 4*s.* 6*d.* a *cwt.* to a number of customers in the Port Tennant area on January 30.

Defendant subsequently admitted to a Ministry inspector that he had put a shovel-full of garth nuts into newland cobbles and added that it was a common practice in the Swansea area to sell all coal of small deliveries at a flat rate of 4*s.* 6*d.* a *cwt.*

The prosecutor stated that the maximum price of newland cobbles was 4*s.* 5*d.* a *cwt.* while the maximum price of garth nuts which, a day after the complaint, had been placed on the schedule was 3*s.* 11½*d.* a *cwt.*, and the proper price for the mixture would therefore have been 4*s.* 2*d.* a *cwt.*

For the defendant, who pleaded guilty, it was urged that the only reason for defendant's action was to stretch his allocation of fairly decent coal among his customers and it was significant that none of his 400 customers had changed their registration last March when they could have done so.

Defendant was fined 20*s.* on each summons, and ordered to pay a total of £10 15*s.* costs.

COMMENT

Article 1 of the Order, after providing in para. 1 that the sale of coal in any district shall be restricted to registered merchants, prohibits in para. 2 the sale by a registered merchant of any grade of coal in respect of which no price is specified in the schedule of prices for that district or sale at a price exceeding that specified in the schedule of prices for that district, provided that in any case where a registered merchant desires to sell a grade of coal not included in the schedule for that district and the Divisional Coal Officer is of the opinion that, owing to the insufficiency of demand for, or to casual supplies only being available of, that grade of coal it is unnecessary or inexpedient to include it in the schedule, a written permit may be given by the Divisional Coal Officer permitting the sale of the grade of coal in question at the price specified in the permit. R.L.H.

No. 38.

A PEDESTRIAN'S SIGNAL TO MOTORIST

A motorist was summoned at East Ham Magistrates' Court on May 22, last, charged with failing to give free and uninterrupted passage to a foot passenger on an uncontrolled pedestrian crossing, contrary to reg. 4 of the Pedestrian Crossing Places (Traffic) Regulations, 1941.

For the prosecution, it was stated by police witnesses that three men and one woman were forced to stand on the crossing to allow defendant to pass. The defendant, who pleaded not guilty, gave evidence that the leading pedestrian " waved him on."

It was contended on behalf of the defendant that he had not failed to give free and uninterrupted passage to any foot passengers—that the leading pedestrian in waving him on was acting as the agent of the others.

The learned stipendiary magistrate, Mr. J. P. Eddy, K.C., rejected these contentions. He said that the defendant was obliged to give precedence to any pedestrians on the crossing. There was no evidence to show that the leading pedestrian had any authority to act on behalf of the others. In any case if a pedestrian stood on the crossing whilst waving a motorist on he would appear to be contravening reg. 7 of the Pedestrian Crossing Places (Traffic) Regulations, 1941.

The magistrate convicted the defendant, but in the circumstances made an order for conditional discharge.

COMMENT

The regulations referred to above were made by virtue of the provisions of s. 18 of the Road Traffic Act, 1934.

The regulations have been before the High Court upon a number of occasions and regs. 3 and 4 in particular received exhaustive consideration in the Court of Appeal in *Sparkes* v. *Edward Ash Ltd.*, (1943) 107 J.P. 44, where Scott, MacKinnon, and Goddard, L.JJ., although differing as to whether or not the appeal should be dismissed, concurred in deciding that these regulations were not invalid on the ground of unreasonableness.

Regulation 8 provides that a breach of the regulations shall be punished by a fine not exceeding 40*s*.

(The writer is indebted to Mr. G. A. Parkin, clerk to the justices, East Ham, for information in regard to this case.) R.L.H.

PENALTIES

London Quarter Sessions—June 1951—Common assault—fined £30 and to pay £10 10*s*. costs. Defendant a twenty-two year old metal merchant with a previous conviction for shopbreaking, had a dance with a girl and then kissed her while they were watching the dancing from a box. Girl tried to return to dance hall—defendant removed light bulbs in passage and there were two scuffles in the dark. Girl in state of semi-collapse—defendant at first charged with indecent assault.

Old Bailey—June 1951—Possessing housebreaking implements by night—eighteen months' imprisonment—defendant, a motor engineer aged twenty-six, was seen in doorway of a chemist's shop at midnight. He was chased, caught, and found to be in possession of twenty-seven skeleton keys—defendant had eight previous convictions.

Tower Bridge Magistrate's Court—June 1951—Receiving four motor tyres, two spare wheels, etc.—total value £31—six months' imprisonment—defendant a forty-eight year old café manager of good character was found in possession of the goods—defendant gave notice of appeal.

South Western Magistrate's Court—June 1951—Shoplifting at a store—one month's imprisonment. Defendant, a cook aged fifty and the mother of a boy of nine, had a previous conviction for theft—she was seen to go from counter to counter appropriating articles without payment, her last acquisition being a shopping bag ! Total value of goods £6.

London Quarter Sessions—June 1951—Shopbreaking and larceny—eighteen months' imprisonment to be followed by a year's police supervision—defendant, a driver aged twenty-nine with twelve previous convictions and stated to be of low intelligence, smashed the window of a tailor's shop and was found inside by the police changing into a new suit value £22.

Lambeth Magistrate's Court—June 1951—wilfully damaging a car window—fined 1*s*. To pay 25*s*. doctor's fee and £4 damages—defendant, a young man who had been a boxer, lost his temper when a car did not slow down as he was crossing a road and put his fist through one of the side windows of the car cutting his thumb.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

THE TULIPS CASE

In the House of Lords last week, Viscount Simon asked whether the Government had any statement to make in relation to the recent case at South Shields, where a woman was remanded in custody for a night for picking three tulips and was fined on the following morning the sum of £5.

The Lord Chancellor, Viscount Jowitt, replied that his attention had been called to that case, and he had obtained a full explanation from the magistrates concerned. The magistrates had been greatly disturbed at the increasing practice of damaging flowers and shrubs growing in public places. He agreed with the magistrates in thinking that that was an obvious anti-social act, which should not be passed over as a matter of no consequence. Such conduct, if unchecked, would make it impossible by planting flowers and shrubs to beautify places to which the public had access.

He could, therefore, well understand that the magistrates, particularly in view of the prevalence of that type of vandalism in their area, thought that the matter should be severely dealt with. The maximum penalty which the law provided, under s. 23 of the Malicious Damage Act, 1861, which was the section under which those proceedings were brought, was a fine of £20 or six months' imprisonment.

He had no reason to doubt the competence of those magistrates, who arrived at their conclusion after careful consideration of all the circumstances. Nevertheless, whilst not wishing to imply any censure he felt bound to say that in his opinion they made a grave error of judgment in the course which they took, though he was satisfied that they were endeavouring to do their duty. To keep that woman in custody overnight, and then to fine her the substantial sum of £5 on the following morning looked like punishing her twice for the same offence. Justices had power to remand the accused person after conviction for the purpose of enabling inquiries (including inquiries into the physical and mental condition of the defendant) to be made, or of determining the most suitable method of dealing with his case. A remand for that purpose might be in custody or on bail.

Viscount Jowitt went on to say that it would obviously be undesirable for him to attempt to lay down any general rule as to the occasions on which those powers should be exercised, or upon the question in what circumstances, when those powers were exercised, the remand should be in custody and not on bail. Two propositions seemed, however, to be clear. First, a series of cases established that that power to remand in custody ought not to be used merely as an additional means of punishing the accused. Secondly, the power of remanding in custody should be used, in the case of a woman with young children, only in very special circumstances.

He hoped that what he had said might provide some useful guidance to magistrates, and he had ascertained that the Lord Chief Justice agreed with the opinion which he had just expressed. After careful consideration of the whole of the circumstances, he did not propose to take any further action regarding that case, and he had caused the magistrates to be informed of his views on that matter.

In reply to a supplementary question, the Lord Chancellor said that in his view it was quite wrong for a court to use the power to remand in custody for the purpose of teaching the accused a lesson, or indeed for any purpose of punishment. It was a power which was given to justices for a wholly different purpose—for example, to make inquiries or to determine what was the most suitable method of dealing with the case.

GORE PETTY SESSIONS

At question time in the Commons, Mr. E. G. M. Fletcher (Islington East) asked the Attorney-General whether he had considered Mr. Iwi's letter of June 6, describing the circumstances in which the Lord Chancellor secured Mrs. Iwi's undertaking not to sit on the magistrates' bench ; and whether he had any further statement to make.

The Attorney-General, Sir Frank Soskice, replied that the Lord Chancellor had considered the letter from Mr. Iwi of June 6. He had no further statement to make except to say that he was responsible for the satisfactory administration of justice, and if controversy between magistrates reached such a point as to threaten the satisfactory administration of justice he was bound to intervene. He was always most reluctant to remove a magistrate from the bench as that would imply that the magistrate in question had been guilty of some discreditable conduct ; but if it were necessary to secure the proper administration of justice he would not hesitate to do so. In the present case, the Lord Chancellor believed that time might heal the differences which had arisen between Mrs. Iwi and the other justices and he therefore pressed for an undertaking which would not make it necessary for him to use his power of removal.

Mr. Fletcher : " May we take it from that answer that, while the Lord Chancellor reserves the full right in his own discretion to remove a magistrate at any time, this particular episode involves no reflection on Mrs. Iwi ?"

The Attorney-General : " This episode involves no reflection at all on Mrs. Iwi."

Lt.-Col. M. Lipton (Brixton) : " Is my right hon. and learned Friend aware that the correspondence in this case provides evidence that the threat or pressure applied to get Mrs. Iwi to give an undertaking not to sit for twelve months was the compelling factor which made her give the undertaking ?"

The Attorney-General : " If Mrs. Iwi had not been prepared to give the undertaking, my noble and learned Friend would have had to consider whether he ought to remove her from the list of magistrates."

JUVENILE OFFENDERS

Mr. M. Redmayne (Rushcliffe) asked the Secretary of State for the Home Department whether he had taken note of a recent case of violent assault by a boy of twelve years of age on a girl of five years of age ; and whether he would make a statement on future policy in regard to the treatment of juvenile offenders.

The Secretary of State for the Home Department, Mr. Chuter Ede, replied that Mr. Redmayne had drawn his attention to the case, in which two brothers, aged twelve and nine, attacked two five-year old children ; and he expressed his sympathy with the feeling it had aroused and his concern for the victims. He had considered a suggestion made to him by Mr. Redmayne that there should be an inquiry into the possibility of giving the courts power to impose corporal punishment in cases of that kind, but after studying the reports on the elder boy's background and personality he could find no grounds for thinking that corporal punishment would be a suitable form of treatment. Nor did he think that that case afforded sufficient grounds for re-opening the question of the power of the court to order corporal punishment.

Mr. Redmayne : " Does the right hon. Gentleman not agree that in the opinion of juvenile court magistrates, probation officers, senior police officers and, indeed, some clerks to justices, corporal punishment is the only answer ; and would he at least call in evidence those who were concerned with this case so that he may be sure that he has the best advice on the subject ?"

Mr. Ede : " When this matter was considered by the Magistrates' Association the opposite view to that expressed by the hon. Gentleman was adopted by a majority. I have made very careful inquiries into this case and into the personality of the older of these two boys."

PARLIAMENTARY INTELLIGENCE

HOUSE OF LORDS

Tuesday, June 12

NATIONAL INSURANCE BILL, read 2a.
MIDWIVES BILL (CONSOLIDATION) BILL, read 2a.
RIVERS (PREVENTION OF POLLUTION) BILL, read 2a.

Thursday, June 14

FIREWORKS BILL, read 2a.

HOUSE OF COMMONS

Monday, June 11

TELEGRAPH BILL, read 3a.

Wednesday, June 13

RIVAL WATER SUPPLIES AND SEWERAGE BILL, read 1a.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

JUSTICES AND MOTORING OFFENCES

Owing to absence abroad I have not been able until now to see Professor Goodhart's letter in your issue of May 19. In these circumstances I trust you will allow me to refute his quite unwarranted assertion that in my view " dangerous driving is frequently not a serious offence." This is not my view nor the view of the Bench over which I have the honour to preside and nothing in my previous letter can be construed as supporting it. I consider that a conviction for dangerous driving should only follow when justified by the grossness of the circumstances but that then the defendant should be severely dealt with. To this end I wrote that " the bad case is easily recognizable and can be faithfully dealt with."

I would also reassure Professor Goodhart that I can distinguish between a summons and a conviction but a conviction for dangerous driving can only follow a summons for dangerous driving and I maintain that statistics of fines for dangerous driving are distorted because, while in some areas (as in Somerset) such summonses are reserved for bad cases, in others they are served as a consequence of practically any accident and that in such cases many benches rather than convict for careless driving impose, quite wrongly, a small fine for the major offence. Figures would, I am confident, show that while convictions for dangerous driving in Rumpshire were proportionately low, in neighbouring Bumpshire they are proportionately high. Such inequality of convictions could not be explained away by the inordinately higher standard of driving in Rumpshire.

I am, Sir, your obedient servant,
KENNETH MACASSEY.

Combe Head House,
Combe St. Nicholas,
Somerset.

REVIEWS

Warmington's Divorce Law. Second edition. By L. Crispin Warmington, and B. Passingham O.B.E., in collaboration with E. E. Spicer, and P. B. Topham. London : Law Notes Lending Library Ltd. Price 35s. net.

This new edition is demanded by many recent changes in the law, and it provides an up to date text book which, as the preface states, has been written for practitioners and students. Practitioners will find it convenient for reference, and students readable as a text book.

The division of the work into chapters, often with sub-divisions, abundant marginal notes and copious footnotes containing references to statutes and case law, insures that finding one's way about the book, even without constant resort to the full index, will soon become easy.

After a historical outline the book proceeds to a complete statement of the law relating to marriage, divorce, judicial separation, nullity, and the other matters falling within the jurisdiction of the courts, including a chapter on the jurisdiction of the magistrates' courts.

Not only are the new statutes and Rules included, but also some 300 cases have been added, while more than 100 cases have been discarded. The omission of cases which have become unnecessary to cite or are no longer of authority is almost as important as the citation of new ones. The practice of the courts is fully dealt with, and one of the appendices consists of a number of useful precedents of pleadings.

The chapter on summary jurisdiction in matrimonial cases is comprehensive and concise. We have just two observations to make. The statement that a court which duly made an order could subsequently vary it, even though the husband had left England and become resident in say, France, needs, we think, to be supplemented by a reminder that the court could not act unless it could cause a summons to be served, which would be impossible while the husband remained in France. Also, we venture to differ from the statement that " Since the order for payment is enforced in the same manner as an affiliation order, an order committing or refusing to commit a husband to prison for making default in payment is not technically an order under the Act of 1895, so that an appeal lies not to a Divisional Court, but, as from an affiliation order, to Quarter Sessions ; or, alternatively, the justices state a special case on a point of law for a Divisional Court of the King's Bench Division." While it is true that there is a statutory right of appeal to quarter sessions against the making or refusal of an affiliation order, we know of no such right of appeal against commitment for non-payment of arrears or against the refusal of process under an affiliation order. We mention these points, not from any desire to criticize an admirable book, but in the hope that the learned authors may consider them, as Mr. Warmington shows by his preface he has considered suggestions of reviewers of the previous edition.

A Handbook of Cautions, Oaths and Recognisances etc., for use by Justices and their Clerks. Compiled by Joseph Wills and Frank Shannon. London : Shaw & Sons, Ltd. Price 5s. 6d. net.

Magistrates and clerks who sit with great frequency become so familiar with the words of statutory cautions and other addresses to parties and witnesses that they rarely need to resort to books. Others, with less experience, may feel the need of a correct form of words readily accessible.

The compilers of this handbook supply that need. It consists of fifteen cards measuring about eight by five inches, boldly printed and bound with steel wire so that they may be folded back. They are handy for use in court or in the office of the justices' clerk, and the statutory references will be found useful.

The forms of recognizance, include the words " Are you content to be so bound ?" which are essential, but which, unfortunately, are in practice frequently omitted.

Milk and Dairies Handbook. Being the sixth edition of the law relating to Dairies, Cowsheds and Milk Shops. By Basil James. London : Haddon, Best and Co. Ltd., Price 30s., postage 10d.

Milk in its various forms and with its different designations, has in these days received increasing attention from the legislature, and there can be no doubt that the public benefits much thereby. Milk is one of the most important items in this nations food, and it is well that its production and sale should be supervised and regulated. We want at reasonable prices pure milk, sanitary cowsheds and clean methods, and therefore regulations and restrictions are necessary.

This new edition of a well tried work, the last previous edition of which was edited by the late Mr. W. H. Dumsday, then editor of this journal, will be generally welcomed, for since 1933 when that edition was published, there have been important changes in the law. Among the statutes passed since then are the Food and Drugs Act, 1938, and the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950, and there has been a substantial body of orders and regulations dealing with milk of various kinds as well as artificial cream and ice cream. Further there has been a considerable addition to case law.

The present volume consists of nearly 500 pages. There is a valuable introduction which should certainly be read as it surveys the book as a whole in some twenty pages with distinctive headings. Statutory provisions are set out and well annotated and there follow four appendices of considerable length, setting out the relevant orders and regulations with annotations, together with some official circulars. It is clearly printed, with suitable differences in type, so as to make reference easy. We have no doubt that this comprehensive work will prove of great assistance to officers of local authorities and practitioners who are concerned in any way with milk.

Rent and Mortgage Interest Restrictions. Twenty-second Edition. By the Editors of " Law Notes." London : " Law Notes " Publishing Offices, Price 32s. 6d. net.

There is no book upon the Rent Restrictions Acts more generally familiar in practice than this, by the editors of *Law Notes* ; its great utility is proved by the number of editions which have come out, a number eclipsing those of any of its rivals. Unlike some other works on the Acts, such as Mr. Megarry's published by Messrs. Stevens, the primary method of arrangement of the present work is in consecutive order of the sections of the Acts, beginning with the Act of 1920. Each section is annotated, and there is no general narrative apart from an introduction covering fifty pages. This introduction is one of the best short accounts we know, of the content of the Acts, and the notes upon the Acts, section by section, are full, accurate, and adequate. For readers who prefer a textbook arranged in this way there is none better. Each practitioner will have his own preference, as between this arrangement and the treatment of separate topics in logical order, with statutory provisions gathered at the end. Probably many of those who, like ourselves, have to deal daily with these tiresome problems will wish to have at least one book arranged on each plan. Upon receiving a book on any legal topic for review, we like if possible to test it by looking up some of the problems which we have before us at the moment, or have recently had, and (as we expected) this new edition of the *Law Notes* work on rent restrictions come through the test with flying colours. For any everyday problem arising on the Acts, the legal practitioner will do well to have it close at hand, and can turn to it with confidence.

The Pocket Law Lexicon. Eighth Edition. By A. W. Motion. London : Stevens & Sons, Ltd. Price 17s. 6d. net.

The *Pocket Law Lexicon* is, we suppose, primarily intended for the law student—yet how fascinating such a book is to all of us. What vast vistas of thought are opened up when one reads, for example, the entry, " Chivalry, Court of—Anciently held as a court of honour merely, before the Earl Marshal, and as a criminal court before the Lord High Constable, jointly with the Earl Marshal. It has long been obsolete." Now why the *merely* ? Why the incongruous mixture of crime and honour ? When was it used as a criminal court and why, when it was so used, was it described as a court of chivalry ? Why and when did it sink into obsolescence ? All sorts of questions spring to mind—they could probably all be answered by reference to a standard history—but that would spoil the fascination such questions hold. Anyone who idly starts reading this volume will find it extremely difficult to put it down again.

Yet of course the book is a serious reference volume, and will be of undoubted value to the law student, and to many practitioners. For those who look for a pointer to some rarely used expression, or for the translation of a Latin phrase, or for a guide towards pronunciation, they will find it in the *Lexicon*. The typography and binding is pleasing, and, as an indication of the comprehensiveness of the volume, it should be mentioned that it exceeds 400 pages.

Annotations of the South African Law Reports 1947-1950. By J. L. Buchanan. Cape Town and Johannesburg : Juta & Co., Ltd. Price 35s. net.

This is a consolidated edition, to which annual supplements will be published, of lists of some South African cases, showing how they have been dealt with on appeal, and showing also how statutory provisions have been dealt with by the courts. For lawyers in this country there can hardly be any reason to obtain the work, but it is a compendious and scholarly production, dealing very thoroughly and also very clearly with the statute law and case law as handled by the Courts of the Union throughout the period covered. Like all the law books published by Messrs. Juta, which we have received for review in recent years, it maintains a standard of binding and printing which since 1939 only a few leading London publishers have equalled.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption of Children—*Effect of adoption on affiliation order made before Act of 1949.*

I shall be obliged if you will please let me have your opinion on the following.

What is the effect of s. 12 (1) of the Adoption Act, 1950 where an adoption order was made before the coming into operation of that Act and of the Adoption Act of 1949. Does the affiliation order cease to have effect as from the date of the Act? In the case in question the affiliation order was made for the benefit of a single woman on January 12, 1944. Before the commencement of the Adoption Act, 1949, the woman married and on April 27, 1948, she and her husband adopted the child in respect of whom the affiliation order was made. The woman now claims that as the adoption order was made before the commencement of the said Act, it does not cease to have effect and she is entitled to enforce payment under that order as well as recover arrears.

AFF.

Answer.

There seems little doubt that any affiliation order made before January 1, 1950, is not automatically terminated by the making of an adoption order. By s. 11 (2) of the Adoption of Children Act, 1949, the adoption orders which terminate an affiliation order are those made "after the commencement of this Act." Section 12 (1) of the Adoption Act, 1950, which replaced s. 11 (2) of the Act of 1949, is not in precisely the same terms, but the Act of 1950 is a consolidation Act, and there is no reason to think that s. 12 (1) effects a change in the law, its wording being appropriate to future orders rather than to past orders. Section 12 (5) rather bears this out. The father can, of course, apply to have the order varied or discharged.

2.—Criminal Law—*Importuning for immoral purpose—Meaning of "persistently" and of "public place."*

Two points have arisen on the interpretation of s. 1 (1) of the Vagrancy Act, 1898, which reads, "Every male person who in any public place persistently solicits or importunes for immoral purposes."

(1). Is a "public house" within the meaning of the words "public place"?

(2). Can persistent importuning be regarded as a continuing offence?

A man has been observed by police officers to frequent a certain public house which is much patronized by sailors. The man's manner and behaviour have caused the police to suspect that he was importuning. Having made the acquaintance of a strange sailor, he subsequently takes the sailor in his car to his batchelor flat, where from observations it appears that the sailor stays the night. It will be appreciated that one ingredient of the offence is persistency. On some evenings it appears that the man is not persistent in his importuning as his self-introduction to a strange sailor on these occasions seems to develop immediately with similar results. In the circumstances, can the offence take place over a series of evenings, as in matrimonial cases of persistent cruelty evidence of isolated incidents can be given to support the allegation of persistency?

Your opinion upon these points will be appreciated. SIST.

Answer.

In our opinion, the evidence should be confined to a particular course of conduct on one day, unless the defence is that there was no immoral purpose in the actions of the defendant, *e.g.*, that he accosted men in order to ask for alms or in order to try to sell something. In that case, evidence of similar acts on other days would be admissible if it tended to rebut that defence.

As to the meaning of "public place," we think that in this enactment it includes a public house, and, indeed, generally any place to which the public are allowed access such as a park, a fun fair, or a public convenience. The object of the provision is to deal with such conduct where it takes place otherwise than in private.

3.—Highway—*Width of land dedicated—Access by adjoining landowner.*

The land shown above the blue line on the enclosed plan forms part of a housing estate belonging to my council. The land below the blue line is part of a farm. Adjoining the boundary line there is a strip of land some eighty feet in width over which it is admitted that the public have a right of way on foot. I am informed that this right of way is sometimes spoken of as a bridleway, but of course bridleways are not much in use at the present time otherwise than by foot passengers. There is a farm cart track in the position indicated on the plan, but it is said that the public, in exercising the right of way on foot, have not necessarily confined themselves to the width of the cart track.

My council have erected a stile in the position shown on the plan for the purpose of giving access from the housing estate to the public footpath, and the farmer claims that he can prevent the public from using this stile on the grounds that there is land between the stile and the public right of way over which the public have no right. If the presumption that the width of a highway runs from hedge to hedge is to be applied in this case it may be claimed on the part of the council that the public right of way (which is admitted to be a right of way on foot only) extends right up to the boundary fence. In that case the council appear to be entitled to provide access to it from their own land by means of the stile indicated on the plan. On the other hand it may be contended on the part of the farmer that a width of eighty feet is unreasonable for a right of way on foot, and that the existence of a defined cart track is *prima facie* evidence of the position of the public footpath. I should be glad to have your advice as to whether the council's claim or the farmer's claim is good in law. The hedges shown on the plan are good stockproof hedges. AING.

Answer.

Like most problems about public rights of way, this is one on which nobody can advise confidently without local investigation of the facts. Good stockproof hedges are not a product of nature. Why did the person who planted them plant them eighty feet apart, if he was entitled to use for farming purposes more of the land between them? Their existence strongly suggests that the intervening land was subject to some rights, paramount to those of the farmers on each side. A wide strip of intervening land like this may have been originally waste of the manor, possibly subject to common rights. One of the things to be investigated is therefore whether there is an inclosure award or other enactment defining the status of this eighty-foot strip. Eighty feet is so much more than is needed for a footway or even for a bridleway that the most natural inference (if the strip was dedicated to public use at that width) is that its dedication was as a drift way rather than a footway or bridleway. A drift way, however, implies a right for the drover to go anywhere necessary while driving his beasts, *i.e.*, it implies at least a limited footway, and if in the normal manner it remains open to all and sundry to use it on foot an inference quickly arises that it has been dedicated to pedestrians as well as to animals and drovers.

In the plan which accompanied the query a cartway is shown close to the southern hedge of the eighty-foot strip, leaving some sixty feet unexplained between the cartway and the northern hedge. The fact that the cartway is in this position is probably due to a sharp southward turn taken by the eighty-foot strip a few yards eastward. Carts coming from the south or going towards the south would naturally cut the corner and thus, at the eastward end of the part of the eighty-foot strip here in question, would hug the southern hedge. We do not therefore think that any inference can be drawn from the existence of a well marked cart track close to the southern hedge, *i.e.*, this in no way destroys what seems to be the more natural inference upon the other facts, that the whole eighty-foot strip has been dedicated to public use as a footway.

Subject to anything which may be discovered upon proper search of local records, the council as landowner on the northern side of the northern hedge seem justified in making an opening in that hedge so as to obtain access on foot to the eighty-foot strip and if, as we infer, the northern hedge has passed to them by the conveyance of the land to the north of it, they are entitled to make that opening and insert a gate or stile for foot passengers without reference to the owner of the soil to the southward of that hedge. If the owner of the soil of the eighty-foot footway or a tenant from him claims the right to use the northernmost sixty feet of the eighty-foot way, *i.e.*, to shut the council out from crossing it on foot to get to the southern side, then we think he should be put to proof. The simplest way to do this would be to carry on with what the council are proposing and leave him to challenge them.

4.—Housing—*Small Dwellings Acquisition Acts—Borrower owning building site.*

I have received an application for a loan under the Small Dwellings Acquisition Acts from a person who intends to construct a new house under licence on a plot of land recently vested in him by a deed of gift. I realize there is no difficulty in making an advance (by instalments) for the construction of a house, by virtue of s 22 (*d*) of the Housing

Act, 1923. I am, however, in doubt as to whether, in such circumstances, the advance can be construed as enabling the applicant " to acquire the ownership of that house " within the meaning of s. 1 of the 1899 Act, in view of the fact that no monetary consideration will be required for him to obtain a title to the property, but only to actually construct the house. ANCS.

Answer.

We think the extension made by the Act of 1923 should be construed as covering a man who already owns the land on which the house is to be placed. The effect will be to bring a house into existence, which is the purpose of the Acts, at a lower cost than if the land as well as the house itself had to be paid for out of the advance. Some support for our view seems to be given by the definition of " ownership " in s. 10 (2) of the Act of 1899.

5.—Landlord and Tenant—*Agricultural holding—Council purchasing for statutory purposes—Notice to quit.*

In December, 1949, a district council purchased by agreement a field for controlled tipping under the Public Health Act, 1936. Previously, they proposed compulsorily to acquire the land, but the district valuer ultimately agreed the consideration money. The husband of the council's immediate predecessor in title let the grazing verbally in 1940 to a farmer, whose farm is situate about eight miles from the field, but the tenant now claims that a year or so later his tenancy became an agricultural and yearly one, and that it commenced at Michaelmas. The council were given to understand that the tenancy was a Ladyday one and notice to determine the same was duly given, whereupon the tenant through his agents gave a counter-notice to the council requiring that s. 24 of the Agricultural Holdings Act, 1948, should apply to the notice to quit, and for the first time contended that it was a Michaelmas tenancy. The tenant has not farmed the field at all but has been taking in cattle on agistment. The council applied for and obtained permission from the planning authority to use the land for the purpose mentioned. It is now proposed to serve the tenant with the usual common law six months' notice to quit the land at Michaelmas, 1951, under the provisions of s. 23 (1) (*d*) of the Act of 1948, mentioning therein the statutory provisions above-mentioned and the fact that the necessary permission had been granted under the enactments relating to town and country planning.

1. Will the proposed notice to quit be valid under the statutory provisions above-mentioned or under any regulations made thereunder.
2. The holding not having been let to the tenant by the council, have the facts of the case any effect on the tenant's compensation ?

A SUBSCRIBER.

Answer.

1. In our opinion, yes.
2. We are not sure what you have in mind, but we think not.

6.—Licensing—*Transfer—Justices discretion as to who is a " fit and proper person."*

Further to your question and answer 26 at p. 233 of *Questions and Answers from the Justice of the Peace* (1938 to 1949), what would your opinion be in the light of *Linnett* v. *Metropolitan Police Commissioner* [1946] 1 All E.R. 380; 110 J.P. 153, as to the legality of a secretary of a limited company owning, and the manager of, the public house holding a justices' licence jointly ? This position seems to have been accepted as a regular one in the case quoted, although reference to *Paterson*, p. 472, and elsewhere therein does not intimate that it is a valid practice, being apparently silent on the point.

My licensing committee have adjourned an application for the transfer of an on-licence to the outside manager for the owners, and because he holds four other licences outside the town, and also as the house in question is frequented by seafarers of all nationalities in the dock area of the town where strict supervision of the premises is essential, may object to the transfer on the ground that in the circumstances, the outside manager is not a " fit and proper person " in that the licence holder's presence on the premises is deemed to be essential.

In somewhat similar circumstances some two years ago the same licensing committee refused a similar transfer on the same grounds, but were reversed on appeal to quarter sessions.

Would you kindly advise :

(*a*) Assuming that s. 23 of the Licensing (Consolidation) Act, 1910, confers an unfettered discretion upon the licensing committee to refuse a transfer of a licence on the ground that the applicant is not a fit and proper person (subject of course to a right of appeal to quarter sessions), is there any authority for saying that the word " proper " in that context might mean " appropriate," in so far as the licensing justices might feel that there is someone better able to hold the licence actually upon the premises, or does " proper " only refer to character ?

(*b*) If the licensing justices in this case refuse the transfer it would appear that s. 29 of the Act would indemnify them against costs awarded against them if they are reversed at quarter sessions, but on the facts, is there any possibility of quarter sessions stipulating that the costs must be paid personally ?

(*c*) Assuming that the applicant might be satisfied if the transfer were to be granted to himself (the outside manager) and the resident manager jointly, are there any unsatisfactory features apparent in this arrangement ? NEL.

Answer.

(*a*) The expression " fit and proper person " ordinarily would refer to character ; but in the exceptional case the expression has been held to relate to the suitability of the proposed licence holder for carrying on the business of a particularly difficult nature. *See*, generally, the judgments in *R.* v. *Holborn Licensing JJ., Ex parte Stratford Catering Co. Ltd.* (1930) 90 J.P. 159.

(*b*) We cannot think it possible that justices would be required to pay the costs in the event of an appeal against refusal of the transfer being successful. *See* Licensing (Consolidation) Act, 1910, s. 32.

(*c*) On the information which our correspondent gives, it seems to be a suitable arrangement that the licence shall be held jointly by the " outside manager " and the person actually responsible for conducting the business.

7.—Magistrates—*Practice and procedure—Police (Property) Act*, 1897 *—Property seized by police—No charge preferred—Jurisdiction of court under the Act of* 1897.

I shall be obliged for your opinion on the following :

A was arrested and charged with offences of housebreaking, storebreaking and larceny in connexion with certain property found in his possession at the time of his arrest. He was convicted of all the offences charged, and sentenced to imprisonment.

In addition to the property which was connected with the offences he was charged with, a quantity of other property was found in his possession at the time of his arrest, including gold rings, binoculars and items of clothing. He was asked to account for the property, and admitted that it was all stolen property, but said it was up to the police to find out where from. The police failed to connect the remainder of the property and no charges were preferred in respect of the additional property. A subsequently retracted his earlier admission and claimed that the additional property was his own. (He also claimed that the property in respect of the offences of which he was convicted was his own.)

Are the police in order in making an application to a court of summary jurisdiction for an order under the Police (Property) Act, 1897, as to the disposal of the additional property, although no charges have been preferred in respect of it? JOS.

Answer.

We have found no case decided on this point, but we have read the judgments in *R.* v. *D'Eyncourt* (1888) 21 Q.B.D. 109. We think that to give the summary court jurisdiction under the Act of 1897 the property must be specifically related to a criminal charge. This property was not, and we think that the court has no jurisdiction in the matter.

8.—Real Property—*Mortgage discharged by payment—Reconveyance indorsed—Language not apt to preserve mortgage.*

Before 1926, A, B, and C purchased certain land as joint tenants and mortgaged the same to D (a bank). After mortgaging the land, A, B, and C formed the X limited company, and before 1926 conveyed the land thereto in fee simple subject to the mortgage. After January 1, 1926, the mortgage was redeemed and D endorsed on the mortgage a reconveyance under which D as mortgagees were expressed to "convey and surrender unto the mortgagor (A, B, and C) all the hereditaments and premises in the within written indenture to the intent that the derivative term of terms of years created by the said indenture and by the Law of Property Act, 1925, shall cease and determine and as to all the said hereditaments and premises absolutely discharged from the moneys secured by the said indenture and all claims and demands on account thereof." The reconveyance did not expressly state the name of the person or persons or company making the payment. The X company subsequently sold the land to E, who accepted the reconveyance endorsed on the mortgage as evidence of repayment of the mortgage and the vesting of the property in the company. In view of s. 115 (2) of the Law of Property Act, 1925, did the reconveyance operate as a transfer of the mortgage debt from the bank to A, B, and C or otherwise? A. BISHOP.

Answer.

The indorsement here used was not in the form which by s. 115 (2) transfers the mortgage. On the facts given, we think the mortgage ceased to exist.

9.—Road Traffic Acts—*Speed limit—"Goods" vehicle not exceeding three tons not used to carry goods—Effect of the Motor Vehicles (Variation of Speed Limit) Regulations*, 1950.

With reference to the above regulations I should be grateful if you would kindly give me your opinion whether you consider they apply to a goods vehicle fitted with pneumatic tyres not exceeding three tons in weight unladen when not drawing a trailer, and which is not licensed under the Road and Rail Traffic Act, 1933. I have in mind a goods van, not a "utility" type vehicle, which is used solely for purposes other than the carriage of goods. JULT.

Answer.

Yes, the vehicle in question is a motor car within the definition in s. 2, Roads Act, 1930, as extended by the Motor Vehicles (Definition of Motor Cars) Regulations, 1941, and if it is so used that no licence under the Road and Rail Traffic Act, 1933, is required the 1950 regulations exclude it from any of the various classes of vehicles for which general speed limits are fixed by the 1930 Act, sch. 1.

10.—Town and Country Planning Act, 1947—*Enforcement—Prosecution—Estoppel by false description.*

The council are taking enforcement proceedings under s. 23 of the Town and Country Planning Act, 1947, against a person using a plot of land for car breaking purposes. This person recently made the normal planning application to the council for consent to the above use, and in answer to the question inquiring the nature of his interest in the land he described himself as the owner. Consent was refused, but no appeal was lodged. When the enforcement proceedings came on for hearing before the magistrates, counsel for the defendant maintained that the notice served under s. 23 of the Act was invalid for several reasons, all of which contentions were dismissed by the magistrates save one. This was to the effect that whereas the council had served notice on the person in question as owner and occupier he was, in fact, only the occupier, and his wife was the owner; in consequence it was asserted the notice was bad, by reason of not having been served upon the person's wife as well as upon him.

In view of the fact that the person concerned had held himself out as the owner in his application for planning consent, the council maintained that by a well-known rule of evidence he was now estopped from denying the statement that he was the owner, and in such circumstances the council were entitled to a verdict of guilty.

As the defendant did not produce in court documentary evidence establishing the alleged ownership of the land by his wife, the bench elected to adjourn the case to enable that to be done, and gave the council to understand that they could then argue their point about estoppel.

There seems to me to be no doubt whatever that the rule relating to estoppel by conduct in the circumstances mentioned would apply in a civil action, but from the law books available to me here I have not been able to establish of a certainty that it applies equally to a criminal case such as this, at any rate nominally, would appear to be, and I should therefore much appreciate your advice, both on the point I have raised and on any other that may occur to you based on the very brief account of the facts I have given. SADA.

Answer.

It seems clear from the text books that the general principle of estoppel by conduct does not apply to criminal cases. We assume that the proceedings in this case are under s. 24 of the Act, and are, therefore, criminal.

We think we cannot do better than quote note (*p*) on p. 317 of *Stone*, 1950, which reads as follows:

"Estoppel is a rule of civil actions. It has no application to criminal proceedings, though in such proceedings matters which in civil actions create an estoppel are usually so cogent that it would be almost useless to set up a different story (*Powell on Evidence*, 10th edn. p. 388)."

11.—Water Act, 1945—*Water fittings—Communication Pipes—Maintenance.*

A communication service pipe runs from the water main in a county road, across the carriage way and footpath and into a dwelling-house. A stop tap is situated on the footpath immediately at the entrance to the dwelling-house. This stop tap is defective and broken and sunk below the level of the roadway. Is the repair of the service pipe up to the point of communication with the water main and of the stop tap, the responsibility of the owner of the dwelling-house or of the local authority? AWAS.

Answer.

We infer that the "local authority" mentioned in the query is the water undertaker. It is their responsibility: *see* sch. 3 to the Water Act, 1945, s. 44.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

COUNTY BOROUGH OF GRIMSBY

Second Assistant Solicitor

APPLICATIONS are invited for the above appointment from Solicitors recently qualified or persons awaiting admission.

Salary, Grade V (a), is £600—£660 a year, rising after two years' experience from date of admission to £685—£760 a year. Applicants should be persons with either local government or good general practice experience. The duties of the post are mainly conveyancing and advocacy, but every opportunity will be given for the person appointed to obtain a wide knowledge of local government law and administration.

Forms of application and further particulars can be obtained from me. The closing date for applications is Saturday, June 30.

L. W. HEELER,
Town Clerk.

Municipal Offices,
Town Hall Square, Grimsby.

CITY OF PLYMOUTH

Junior Assistant Solicitor

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor in my office within Grades Va—VII (£600–£760 per annum) of the A.P.T. Division of the National Scales. Commencing salary will be according to date of admission. Previous experience in a local government office is not required; good conveyancing experience is essential. The appointment is superannuable, and the successful applicant will be required to pass a medical examination.

Applications, which must be received by me not later than Tuesday, July 17, 1951, should give particulars of the applicant's age, education, articles, date of admission, present and previous appointments and legal experience, and should state the names and addresses of not more than two referees as to character and ability.

COLIN CAMPBELL,
Town Clerk.

Pounds House,
Peverell,
Plymouth.

COUNTY COUNCIL OF THE WEST RIDING OF YORKSHIRE

Appointment of Assistant Solicitor

The County Council invite applications from Solicitors for appointment as ASSISTANT SOLICITOR in the office of the County Prosecuting Solicitor at a commencing salary of £700 per annum, rising by increments of not less than £50 to a maximum of £1,310 per annum. The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, as amended by the West Riding County Council (General Powers) Act, 1948, and the successful candidate will be required to pass a medical examination. Further particulars of the duties and terms of appointment, together with form of application, may be obtained on request, and applications should reach the undersigned not later than July 14, 1951.

BERNARD KENYON,
Clerk of the County Council.

County Hall,
Wakefield.

CITY OF MANCHESTER PROBATION SERVICE

APPLICATIONS are invited for the appointment of two whole time Male Probation Officers.

Applicants must be not less than 23 years, nor more than 40 years of age, unless they are at present serving as whole time Probation Officers.

The salary and conditions of service will be in accordance with the Probation Rules, 1949, and 1950. Applications, in own handwriting, stating age, qualifications and experience, together with not more than three recent testimonials should reach me not later than June 30, 1951, endorsed "Male Probation Officer."

WALTER LYON,
Clerk to the Justices and Secretary to the Probation Committee.

12, Minshull Street,
Manchester 1.

THE ROYAL BOROUGH OF KENSINGTON

Appointment of Senior Law Clerk

APPLICATIONS are invited for the appointment of Senior Law Clerk (Unadmitted) in the Town Clerk's Department at a salary in accordance with Grade VI of the National Scales, *viz*: £675 rising to £740 per annum inclusive of London Weighting.

Candidates should have had considerable experience in a Solicitor's office or the legal department of a local authority and be capable of carrying out general legal and conveyancing work without supervision.

The appointment is permanent and superannuable.

Applications should give details of age, education, qualifications, present and previous appointments and experience. The names and addresses of three persons, to whom reference can be made if the candidate is selected for interview, should be included in the application which must reach the undersigned within ten days of the publication of this advertisement.

The Council are not in a position to provide the successful candidate with housing accommodation.

Canvassing, directly or indirectly, will disqualify.

J. WARING SAINSBURY,
Town Clerk.

Town Hall,
Kensington, W.8.
June, 1951.

CITY OF NOTTINGHAM

Appointment of Full-Time Female Probation Officer

APPLICATIONS are invited for the above appointment.

The appointment will be subject to the Probation Rules, 1949, and 1950, and the salary will be in accordance with such rules and subject to superannuation deductions.

The successful applicant may be required to undergo a medical examination.

Applications to reach the undersigned by Saturday, July 7, 1951.

W. M. R. LEWIS,
Secretary of the Probation Committee.

Guildhall,
Nottingham.

SOLICITOR'S DEPARTMENT METROPOLITAN POLICE

SOLICITORS required on the permanent legal staff at New Scotland Yard. Age limits 24–40. Duties: Chiefly advocacy in Courts of Summary Jurisdiction. Previous experience not essential. Salary during probationary period £550 at age 24 plus £25 for each year above 24 up to a maximum of £700. On confirmation £800 less £25 for each year below 30; thereafter annual increments of £30 to £1,070.

Particulars (including details of higher posts) and application form from the Secretary, Room 163, New Scotland Yard, S.W.1.

CITY OF CARDIFF

Appointment of Additional Full-Time Male Probation Officer

Appointment of Full-Time Female Probation Officer

APPLICATIONS are invited for the above appointments. The appointments will be in accordance with the Probation Rules and the Salaries subject to Superannuation deductions. The successful candidates will be required to pass a medical examination.

Applications, stating age, and accompanied by not more than three recent testimonials must reach me, the undersigned, not later than July 14, 1951.

VERNON W. REES,
Secretary to the Probation Committee.

Law Courts,
Cardiff

BOROUGH OF HENDON

Town Clerk's Department

Second Assistant Solicitor

APPLICATIONS are invited for this appointment. The salary will be in accordance with Grade A.P.T. VIII of the National Scheme of Conditions of Service, plus London weighting (£30 per annum) (*i.e.*, the inclusive salary will be £765 per annum, rising by annual increments of £25 to a maximum of £840 per annum).

The appointment will be subject to the National Scheme of Conditions of Service, the Local Government Superannuation Act, 1937, the passing satisfactorily of a medical examination and, for new entrants to the Local Government Service, to a term of probation of six months at the end of which, subject to a satisfactory report, transfer to the permanent staff will be effected.

Canvassing, either directly or indirectly, or submitting a testimonial from any member of the Council, will be deemed a disqualification.

Applications (in envelopes endorsed "Second Assistant Solicitor"), stating age, qualifications and experience and the names and addresses of two persons to whom reference can be made, must be received by the undersigned not later than Tuesday, July 3, 1951.

LEONARD WORDEN,
Town Clerk.

Town Hall,
Hendon, N.W.4.

Printed by R. J. ACFORD Ltd., Terminus Road, Chichester, Sussex, and published by the Proprietors, JUSTICE OF THE PEACE, Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. SATURDAY, June 23, 1951. Price 1s. 8d., post free 1s. 9d